

## **AGENDA**

**REGULAR COUNCIL MEETING  
TUESDAY  
JULY 19, 2012**

**COUNCIL CHAMBERS  
211 WEST ASPEN AVENUE  
12:00 NOON AND 5:30 P.M.**

### **12:00 NOON MEETING**

*Individual Items on the 12:00 noon meeting agenda may be postponed to the 5:30 meeting.*

#### **1. CALL TO ORDER**

#### **NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION**

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).

#### **2. ROLL CALL:**

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

**MAYOR NABOURS \_\_\_\_\_  
VICE MAYOR EVANS \_\_\_\_\_  
COUNCILMEMBER BAROTZ \_\_\_\_\_  
COUNCILMEMBER BREWSTER \_\_\_\_\_**

**COUNCILMEMBER ORAVITS \_\_\_\_\_  
COUNCILMEMBER OVERTON \_\_\_\_\_  
COUNCILMEMBER WOODSON \_\_\_\_\_**

#### **PUBLIC PARTICIPATION.**

**Public Participation enables the public to address the Council about an item that is not on the agenda. Comments relating to items that are on the agenda will be taken at the time that the item is discussed.**

**If you wish to address the Council at tonight's meeting, please complete a comment card and submit it to the recording clerk as soon as possible. Your name will be called when it is your turn to speak.**

**You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.**

**3. BOARD AND COMMISSION APPOINTMENTS**

**The City Council may vote to discuss appointments in executive session pursuant to A.R.S. § 38.431.03(A)(1). The names of the applicants may be obtained by contacting the City Clerk.**

- A. Consideration of Appointments:** Councilmember liaisons to boards and commissions, Coconino County Boards and councils, and various community boards and councils.

**RECOMMENDED ACTION:**

Make Council liaison appointments to the City's boards and commissions, Coconino County boards and councils, and various community boards and councils.

**4. LIQUOR LICENSE PUBLIC HEARINGS**

- A. Consideration and Action on Liquor License Application:** Charles Hoyt, "Louie's Chicken Shack", 1926 N. 4th St., #8B, Series 12, New License.

**RECOMMENDED ACTION:**

Open the public hearing.  
Receive citizen input.  
Close the public hearing.

The City Council has the option to:

- (1) Forward the application to the State with a recommendation for approval;
- (2) Forward the application to the State with no recommendation; or
- (3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.



- B. Consideration and Action on Liquor License Application:** Omar Castro, "Cyndie's Pizza", 2116 E. Route 66, Series 07, Person Transfer and Location Transfer.

**RECOMMENDED ACTION:**

Open the public hearing.  
Receive citizen input.  
Close the public hearing.

The City Council has the option to:

- (1) Forward the application to the State with a recommendation for approval;
- (2) Forward the application to the State with no recommendation; or
- (3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

- C. Consideration and Action on Liquor License Application:** Justin Volkenant, "Bun Huggers", 901 S. Milton Road, Suite A, Series 12, New License.

**RECOMMENDED ACTION:**

Open the public hearing.  
Receive citizen input.  
Close the public hearing.

The City Council has the option to:

- (1) Forward the application to the State with a recommendation for approval;
- (2) Forward the application to the State with no recommendation; or
- (3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

- D. Consideration and Action on Liquor License Application:** Glenn Meinen, "Cyrano's Seafood & Chophouse", 1850 N. Fort Valley Road, Series 12, New License.

**RECOMMENDED ACTION:**

Open the public hearing.  
Receive citizen input.  
Close the public hearing.

The City Council has the option to:

- (1) Forward the application to the State with a recommendation for approval;
- (2) Forward the application to the State with no recommendation; or
- (3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

- E. **Consideration and Action on Liquor License Application:** Mark Wagner, "Chevron", 1785 S. Railroad Springs Blvd., Series 09, Person Transfer.

**RECOMMENDED ACTION:**

Open the public hearing.  
Receive citizen input.  
Close the public hearing.

The City Council has the option to:

- (1) Forward the application to the State with a recommendation for approval;
- (2) Forward the application to the State with no recommendation; or
- (3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

- F. **Consideration and Action on Liquor License Application:** H.J. Lewkowitz, "Museum of Northern Arizona", 3101 N. Fort Valley Road, Series 07, Person Transfer and Location Transfer.

**RECOMMENDED ACTION:**

Open the public hearing.  
Receive citizen input.  
Close the public hearing.

The City Council has the option to:

- (1) Forward the application to the State with a recommendation for approval;
- (2) Forward the application to the State with no recommendation; or
- (3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

- G. **Consideration and Action on Liquor License Application:** Angela Thomas, "A'scentual Beauty Boutique", 12 E. Route 66, #102, Series 10, New License.

**RECOMMENDED ACTION:**

Open the public hearing.  
Receive citizen input.  
Close the public hearing.

The City Council has the option to:

- (1) Forward the application to the State with a recommendation for approval;
- (2) Forward the application to the State with no recommendation; or
- (3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

**5. CONSENT ITEMS**

**ALL MATTERS UNDER 'CONSENT AGENDA' ARE CONSIDERED BY THE CITY COUNCIL TO BE ROUTING AND WILL BE ENACTED BY ONE MOTION APPROVING THE RECOMMENDATIONS LISTED ON THE AGENDA. UNLESS OTHERWISE INDICATED, EXPENDITURES APPROVED BY COUNCIL ARE BUDGETED ITEMS.**

**A. Consideration and Approval of Purchase Under State Contract:**

All-wheel-drive motor graders with snow wing attachments.

**RECOMMENDED ACTION:**

Approve the purchase under State Contract of two all-wheel-drive motor graders with snow wing attachments in the amount of \$468,814.92, plus the trade in of two non all-wheel-drive 1986 and 1989 motor graders and a 1984 D7G dozer.

**B. Consideration and Approval of Construction Contract: Woodlands Village Blvd. Median and Edge Improvements Project.****RECOMMENDED ACTION:**

1. Approve the construction contract with R.K. Sanders Inc. in the amount of \$384,297.90 which includes a \$42,570 (11%) contract allowance for accommodation of unanticipated field issues and a contract time schedule of 100 calendar days; and
2. Approve administrative Change Order Authority to the City Manager in the amount of \$34,172 (10% of bid contract amount, less allowance) to cover potential costs associated with unanticipated items of work; and
3. Authorize the City Manager to execute the necessary documents.

**C. Consideration and Approval of Construction Contract: Coconino/Elden/Humphreys 2010 bond improvements projects.****RECOMMENDED ACTION:**

1. Approve the construction contract (including the Base Bid and the Additive Alternate) with Eagle Mountain Construction in the amount of \$1,285,353.00 which includes a \$70,000.00 contract allowance and a 120 calendar day contract time;
2. Approve administrative change order authority in the amount of \$61,000 (5% of the contract amount, less allowance) to cover potential costs associated with unanticipated items of work; and
3. Authorize the City Manager to execute the necessary documents.

- D. **Consideration and Approval of Construction Contract:** Shadow Mountain Phase I: Linda Vista Valley gutters.

**RECOMMENDED ACTION:**

1. Approve the construction contract with Eagle Mountain Construction, Inc. in the amount of \$212,566 with a 90 day contract time ;
2. Approve change order authority in the amount of \$21,256 (10%) of the contract amount to cover potential costs associated with unanticipated items of work; and
3. Authorize the City Manager to execute the necessary documents.

- E. **Consideration and Approval of Intergovernmental Agreement:** Dispatch services.

**RECOMMENDED ACTION:**

Approve the Intergovernmental Agreement with Highlands Fire District.\

- F. **Consideration and Approval of Intergovernmental Agreement/Joint Project Agreement:** Airport Pavement Management Program System.

**RECOMMENDED ACTION:**

Approve the Intergovernmental Agreement/Joint Project Agreement with the State of Arizona Department of Transportation Aeronautics Division in the amount of \$453,060.80, plus a City match of \$50,340.20.

6. **ROUTINE ITEMS**

- A. Consideration of Appointments: On Call Judges for the Flagstaff Municipal Court.

**RECOMMENDED ACTION:**

Appoint on-call judges as follows: Paul Christian, Gerald McCafferty, Tom Miller, Jennifer Nagel, Warren Sanford, Susan Slasor, and Sandra Wagner

- B. **Consideration and Adoption of Resolution No. 2012-27:** A resolution of the City Council of the City of Flagstaff authorizing signatures for checks and payment vouchers.

**RECOMMENDED ACTION:**

Read Resolution No. 2012-27 by title only.  
Adopt Resolution No. 2012-27.

- C. **Consideration of Resolution 2012-29:** A resolution of the City Council of the City of Flagstaff, Arizona, granting a public utility easement to Arizona Public Service Company at 1800 N. El Paso Flagstaff Road.

**RECOMMENDED ACTION:**

Read Resolution No. 2012-29 by title only.  
Adopt Resolution No. 2012-29.

7. **PRESENTATION OF CITY MANAGER'S AWARDS**

**RECESS**

**5:30 P.M. MEETING**

8. **RECONVENE REGULAR MEETING**

**NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION**

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9. **PLEDGE OF ALLEGIANCE, INVOCATION, AND VISION STATEMENT**

**VISION STATEMENT**

The City of Flagstaff will be a sustainable, safe and vibrant community retaining the character, high quality of life and charm of a small town. Flagstaff will offer economic opportunities, educational choices, attainable housing, a protected environment and cultural and career opportunities to a diverse population.

**10. ROLL CALL :**

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

**MAYOR NABOURS \_\_\_\_\_****COUNCILMEMBER ORAVITS \_\_\_\_\_****VICE MAYOR EVANS \_\_\_\_\_****COUNCILMEMBER OVERTON \_\_\_\_\_****COUNCILMEMBER BAROTZ \_\_\_\_\_****COUNCILMEMBER WOODSON \_\_\_\_\_****COUNCILMEMBER BREWSTER \_\_\_\_\_****11. APPROVAL OF MINUTES FROM PREVIOUS MEETINGS**

No items were submitted.

**PUBLIC PARTICIPATION.**

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**12. CARRY OVER ITEMS FROM THE 12:00 NOON AGENDA****13. PUBLIC HEARING ITEMS**

No items were submitted.

**14. REGULAR AGENDA**

- A. Consideration and Approval of Grant Agreement:** Route 66 Flagstaff Urban Trails System rest stop interpretive signage.

**RECOMMENDED ACTION:**

Approve the Grant Agreement with the National Park Service in the amount \$8,750.00.

- B. Consideration and Approval of Settlement Agreement:** Presidio in the Pines Homeowners Association, Inc., Tru-Built Construction, Inc., Majestic Presidio, LLC, Par Partners, LLC, Doucette Flagstaff I, LLC, and Presidio Financial, LLC.

**RECOMMENDED ACTION:**

Approve the settlement agreement.

- C. Consideration and Adoption of Resolution No. 2012-31:** A resolution approving the Third Supplement to the Development Agreement between the City of Flagstaff and Miramonte Arizona, LLC.

**RECOMMENDED ACTION:**

Read Resolution No. 2012-31 by title only.  
Adopt Resolution No. 2012-31.

- D. Consideration and Approval of Lease of City-Owned Property:** Snow play recreational area on the northeast portion of McMillan Mesa.

**RECOMMENDED ACTION:**

1. Approve the Lease Agreement with D&C Maintenance and Snow Plowing, L.L.C., for an annual lease fee of \$3,000 for the winter season of operation; revenue share, based on gross revenue less sales tax, of 5.5% up to \$400,000; 7.5% from \$400,001 to \$600,000; and 9.5% from \$600,001 and higher; with an initial term of ten (10) years and an option for two 5-year extensions upon mutual written agreement between both parties; and
2. Authorize the City Manager to execute the necessary documents.

- E. Consideration and Adoption of Resolution No. 2012-30:** A resolution of the Council of the City of Flagstaff, Arizona, ordering and calling a special debt authorization election to be held on November 6, 2012, in and for the City of Flagstaff, Arizona, to submit to the qualified electors thereof questions with respect to the sale and issuance of various purpose bonds of the City of Flagstaff, Arizona .

**RECOMMENDED ACTION:**

Read Resolution No. 2012-30 by title only.  
Adopt Resolution No. 2012-30.

**15. DISCUSSION ITEMS**

- A. Discussion/Consideration of Zoning Code Amendment:** A-frame signs.

**RECOMMENDED ACTION:**

Discuss and provide direction.

- B. Consideration/Discussion:** August City Council Retreat

**RECOMMENDED ACTION:**

Discuss format and facilitation issues related to the August City Council Retreat

**PUBLIC PARTICIPATION****INFORMATIONAL ITEMS AND REPORTS FROM COUNCIL AND STAFF, REQUESTS FOR FUTURE AGENDA ITEMS****ADJOURNMENT****CERTIFICATE OF POSTING OF NOTICE**

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Flagstaff City Hall on \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m. in accordance with the statement filed by the City Council with the City Clerk.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Margie Brown, MMC, City Clerk



### 3. A.

## CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Margie Brown, Deputy City Clerk  
**Date:** 07/05/2012  
**Meeting Date:** 07/17/2012



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### TITLE:

**Consideration of Appointments:** Councilmember liaisons to boards and commissions, Coconino County Boards and councils, and various community boards and councils.

### RECOMMENDED ACTION:

Make Council liaison appointments to the City's boards and commissions, Coconino County boards and councils, and various community boards and councils.

### Policy Decision or Reason for Action:

Many of the Councilmember liaison appointments are required by law or some legal mechanisms. Those without a legal reason for Council appointments have been identified as bodies that the Council wishes to participate in, either by request of the agency or some other City relationship.

Subsidiary Decisions Points: There are no subsidiary decisions to be made unless the Council wishes to revisit its discretionary appointments.

### Financial Impact:

There is no financial impact related to these items.

### Connection to Council Goal:

A sustainable community through economic vitality, environmental protection and social inclusion.

Diversity of arts, culture and educational opportunities.

Livability through good neighborhoods, affordable housing and varied recreational activities.

Effective governance.

**Has There Been Previous Council Decision on This:**

Not for this two years cycle; however, these appointments are typically made biennially following a Council election.

**Options and Alternatives**

1. The Council could choose to revisit its voluntary memberships on some of the agency boards and determine whether or not it wishes to continue with any or all of them.
2. The Council could expand the list of voluntary entities that various Councilmembers may wish to serve on.
3. The Council could table the action to allow time for further discussion.

There are no consequences to any of the alternatives.

**Background/History:**

Councilmember appointments to community boards and commissions are typically made following a General Election after new Councilmembers have been elected and sworn into office.

**Key Considerations:**

Councilmember partnerships through participation on various community boards and commissions provide important historical Council, agency, and community perspectives and important links in the communication process among the City, Council, Coconino County, regional partners, and the community.

**Community Benefits and Considerations:**

Community boards and commissions provide greater public participation and input, promoting increased communication among regional partners.

**Community Involvement:**

All members of the City Council are elected by the voters of Flagstaff. Because these are Council appointments chosen among the Councilmembers, there is no other community involvement.

**Expanded Options and Alternatives:**

See options on Page 1.

**Date of Council Approval:**

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**Attachments:**    Council Reps to Agencies

Revised July, 2012

<b><u>COUNCIL LIAISON REQUIRED BY STATUTE</u></b>	<b><u>MEETING DATES</u></b>	<b><u>CURRENT LIAISON</u></b>	<b><u>NEW LIAISON</u></b>
Flagstaff Housing Authority ( <b>ARS Designates Mayor</b> )	3rd Wed/Noon		Mayor Nabours
Public Safety Personnel Retirement System ( <b>Mayor per ARS</b> )	As needed		Mayor Nabours
<b><u>REQUIRED BY IGA OR OTHER AGREEMENT</u></b>			
Colorado Plateau Water Adv. Council ( <b>1 regular &amp; 1 alternate</b> )	4th Fri./10:00 a.m.		Mark Woodson
<i>Alternate</i>		Mark Woodson	Coral Evans
Flagstaff Metropolitan Planning Org. ( <b>3 liaisons required</b> )	4th Wed./8:00 a.m.	Woodson, Evans, Overton	Woodson, Evans, Oravits
Library Board ( <b>IGA requires Council liaison</b> )	3rd Thurs./3:00 p.m.	Celia Barotz	Celia Barotz
Northern Arizona Council of Governments (NACOG) ( <b>Required</b> )	3rd mo/4th Thurs/ 10:00 a.m.	Mark Woodson	Mark Woodson
No. Ariz. Intergov'l Pub Trans. Auth. ( <b>2 liaisons and 2 alternates required</b> ).	Wed/10:00 a.m.		Celia Barotz
		Celia Barotz	Karla Brewster
<i>Alternate</i>		Scott Overton	Scott Overton
<i>Alternate</i>			
<b><u>REQUIRED BY RESOLUTION/ORDINANCE</u> <i>Can be Changed.</i></b>			
Audit Committee	1/yr. when called	Scott Overton	Celia Barotz
Self Insurance Trust Fund Board	1/yr. when called	Scott Overton	Celia Barotz
Regional Plan Advisory Committee Steering Team ( <b>3</b> )	1st mo.qtrly/last Monday/10:30 a.m.	Barotz, Evans	Barotz, Evans
<b><u>NOT REQUIRED/DISCRETIONARY</u></b>			
Economic Collaborative of Northern Arizona (EcoNA) – ( <b>Can be Council liaison or EV Director</b> )		Karla Brewster	Scott Overton
Flagstaff Cultural Partners ( <b>1 city member appointment</b> )	4th Wed/4:30 p.m.		Celia Barotz
No. Ariz. Municipal Water Users' Ass'n	as scheduled	Karla Brewster	Jeff Oravits
<i>Alternate</i>			Mark Woodson
Coconino County Board of Health	Every other 2nd Wed/12:00 p.m.	Mark Woodson	Jeff Oravits

## 4. A.

### CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Susan Alden, City Records Technician  
**Date:** 06/04/2012  
**Meeting Date:** 07/17/2012



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#### TITLE:

**Consideration and Action on Liquor License Application:** Charles Hoyt, "Louie's Chicken Shack", 1926 N. 4th St., #8B, Series 12, New License.

#### RECOMMENDED ACTION:

Open the public hearing.  
Receive citizen input.  
Close the public hearing.

The City Council has the option to:

- (1) Forward the application to the State with a recommendation for approval;
- (2) Forward the application to the State with no recommendation; or
- (3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

#### Policy Decision or Reason for Action:

Charles Hoyt has opened Louie's Chicken Shack which requires a new Series 12 (restaurant) license.

#### Financial Impact:

There is no budgetary impact to the City of Flagstaff.

#### Connection to Council Goal:

Effective governance.

- Regulatory action.\

### **Has There Been Previous Council Decision on This:**

No.

### **Options and Alternatives**

- Table the item if additional information or time is needed.
- Make no recommendation.
- Forward the application to the State with a recommendation for approval.
- Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

### **Background/History:**

- An application for a new Series 12 liquor license was received from Charles Hoyt for Louie's Chicken Shack, 1926 N. 4th St., #8B.
- A background investigation performed by Sgt. Matt Wright of the Flagstaff Police Department resulted in a recommendation for approval.
- A background investigation performed by Gregory Brooks, Code Compliance Officer II, resulted in no active code violations being reported.
- Sales tax and licensing information was reviewed by Ranbir Cheema, Tax, Licensing & Revenue Manager, who stated that the business is in compliance with the tax and licensing requirements of the City.

### **Key Considerations:**

- Because the application is for a new license, consideration may be given to both the location and the applicant's personal qualifications.
- A Series 12 license allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.
- The deadline for issuing a recommendation on this application is July 15, 2012.
- The applicant is not required to provide the distance between the applicant's business and the nearest church or school for government (Series 05), hotel/motel (Series 11), or restaurant, (Series 12) liquor license applications; and the State does not require a geological map or list of licenses in the vicinity for any license series.

### **Community Benefits and Considerations:**

- This business will contribute to the tax base of the community.
- We are not aware of any other relevant considerations.

**Community Involvement:**

- The application was properly posted on May 29, 2012.
- No written protests have been received to date.

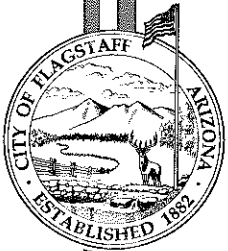
**Expanded Options and Alternatives:**

- (1) Table the item if additional information or time is needed.
- (2) Make no recommendation.
- (3) Forward the application to the State with a recommendation for approval.
- (4) Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

**Date of Council Approval:**

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**Attachments:**    [Louie's Chicken Letter to Applicant](#)  
                          [Louie's Chicken Hearing Procedures](#)  
                          [Louie's Chicken Series Description](#)  
                          [Louie's Chicken Police Dept Memo](#)  
                          [Louie's Chicken Code Enforcement Memo](#)  
                          [Louie's Chicken Tax Memo](#)



# City of Flagstaff

OFFICE OF THE CITY CLERK

July 5, 2012

Charles Hoyt  
P.O. Box 30116  
Flagstaff, AZ 86003

Dear Mr. Hoyt:

Your application for a new Series 12 liquor license for Louie's Chicken Shack at 1926 N. 4<sup>th</sup> St., #8B was posted on May 29, 2012. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on Tuesday, July 17, 2012 which begins at noon.

It is important that you or your representative attend this Council Meeting to make a presentation on your application and to answer any questions that the City Council may have. Failure to make a presentation could result in a recommendation for denial of your application. We suggest that you contact your legal counsel or the Department of Liquor Licenses and Control at 602-542-5141 to determine the criteria for your license and to make a presentation on that information, as well as stating whether or not you have attended the necessary training, whether or not you have had a business prior to this one, and, if so, the kinds of business(es) you have operated. To help you understand how the public hearing process will be conducted, we are enclosing a copy of the City's liquor license application hearing procedures.

The twenty-day posting period for your liquor license application expired on June 18, 2012, and the application may be removed from the premises.

If you have any questions, please feel free to call me at 928-213-2066.

Sincerely,

Susan Alden  
City Records Technician

Enclosure





# City of Flagstaff

## Liquor License Application Hearing Procedures

1. When the matter is reached at the Council meeting, the presiding officer will accept a motion to open the public hearing on the item.
2. The presiding officer will request that the Applicant come forward to address the Council regarding the application in a presentation not exceeding ten (10) minutes. Council may question the Applicant regarding the testimony or other evidence provided by the Applicant.
3. The presiding officer will then ask whether City staff have information to present to the Council regarding the application. Staff should come forward at this point and present information to the Council in a presentation not exceeding ten (10) minutes. Council may question City staff regarding the testimony or other evidence provided by City staff.
4. Other parties, if any, may then testify, limited to three (3) minutes per person. Council may question these parties regarding the testimony they present to the Council.
5. The Applicant may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of the Applicant.
6. City staff may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of City Staff.
7. By motion, Council will then close the public hearing.
8. By motion, the Council will then vote to forward the application to the State with a recommendation of approval, disapproval, or shall vote to forward with no recommendation.



## License Types: Series 12 Restaurant License

Non-transferable

On-sale retail privileges

Note: Terms in **BOLD CAPITALS** are defined in the glossary.

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### PURPOSE:

Allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.

### ADDITIONAL RIGHTS AND RESPONSIBILITIES:

An applicant for a restaurant license must file a copy of its restaurant menu and Restaurant Operation Plan with the application. The Plan must include listings of all restaurant equipment and service items, the restaurant seating capacity, and other information requested by the department to substantiate that the restaurant will operate in compliance with Title 4.

The licensee must notify the Department, in advance, of any proposed changes in the seating capacity of the restaurant or dimensions of a restaurant facility.

A restaurant licensee must maintain complete restaurant services continually during the hours of selling and serving of spirituous liquor, until at least 10:00 p.m. daily, if any spirituous liquor is to be sold and served up to 2:00 a.m.

On any original applications, new managers and/or the person responsible for the day-to-day operations must attend a basic and management training class.

A licensee acting as a **RETAIL AGENT**, authorized to purchase and accept **DELIVERY** of spirituous liquor by other licensees, must receive a certificate of registration from the Department.

A **PREGNANCY WARNING SIGN** for pregnant women consuming spirituous liquor must be posted within twenty (20) feet of the cash register or behind the bar.

A log must be kept by the licensee of all persons employed at the premises including each employee's name, date and place of birth, address and responsibilities.

Bar, beer and wine bar, and restaurant licensees must pay an annual surcharge of \$20.00. The money collected from these licensees will be used by the Department for an auditor to review compliance by restaurants with the restaurant licensing provisions of ARS 4-205.02.

## MEMORANDUM

Memo # 12-081-01

**TO:** Chief Kevin Treadway

**FROM:** Sgt. Matt Wright

**DATE:** June 1, 2012

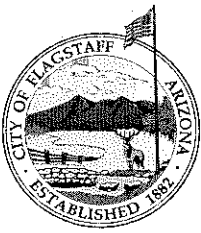
**RE:** LIQUOR LICENSE APPLICATION – SERIES 12- FOR “Louie’s Chicken Shack”

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On June 1, 2012, I initiated an investigation into an application for a series 12 liquor license filed by Charles James Hoyt on behalf of Louie’s Chicken Shack. The restaurant is located at 1926 N. Fourth St. #8B in Flagstaff. Charles Hoyt is the listed controlling person and Agent on the application and plans on running the day to day operations. This is an application for a new series 12 license #12033323.

I conducted a query through local systems and public access on Charles James Hoyt. Charles was found to have been arrested in 2003 for DUI. Charles was arrested in 2011 for failing to pay a traffic fine, which was later found to be court error. No other derogatory records were found on Charles. Charles has attended the mandatory liquor law training course and provided proof. Charles is the owner of Louie’s Lounge located at 1501 S. Milton. Charles has a series 12 liquor license at that location which is in good standing. Charles has not been involved in any liquor violations at that location

As a result of this investigation, I can find no reason to oppose this series 12 liquor license application. Recommendation to Council would be for approval.



## Planning and Development Services Memorandum

**June 1, 2012**

**TO:** Susan Alden, City Records Technician

**THROUGH:** Roger Eastman, AICP, Zoning Code Administrator

**FROM:** Gregory Brooks, Code Compliance Officer II

**RE:** Application for Liquor License #12033323  
1926 N. 4<sup>th</sup> St, #8B, Flagstaff, Arizona 86004  
Assessor's Parcel Number 107-14-005B  
Charles Hoyt on behalf of Louie's Chicken Shack

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This application is a request for a Series 12 (Restaurant) new liquor license from Charles Hoyt on behalf of Louie's Chicken Shack, located in the Community Commercial (CC) Zone. This district allows for restaurants.

This is a new liquor license.

There are no active code violations associated with Charles Hoyt or Louie's Chicken Shack.

This Liquor License is recommended for approval.

# Memo

To: Susan Alden, City Records Technician

From: Ranbir Cheema - Tax, Licensing & Revenue Manager



Date: June 15, 2012

Re: Series 12 Liquor License – New License - Louie's Chicken Shack

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Louie's Lounge LLC DBA Louie's Chicken Shack with Charles Hoyt as its Managing Member is properly licensed with the City and current in tax returns filing. There is past due tax, penalty and interest balances due on their account and they have entered into a payment agreement with the City to pay this amount. At this time Tax, Licensing and Revenue Section anticipates a full payment on their account within seven months. I do not have a reason to hold up this application at this time.

/liquor licenses/Louie's Chicken Shack 3.doc

## 4. B.

### CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Susan Alden, City Records Technician  
**Date:** 06/14/2012  
**Meeting Date:** 07/17/2012



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#### TITLE:

**Consideration and Action on Liquor License Application:** Omar Castro, "Cyndie's Pizza", 2116 E. Route 66, Series 07, Person Transfer and Location Transfer.

#### RECOMMENDED ACTION:

Open the public hearing.  
Receive citizen input.  
Close the public hearing.

The City Council has the option to:

- (1) Forward the application to the State with a recommendation for approval;
- (2) Forward the application to the State with no recommendation; or
- (3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

#### Policy Decision or Reason for Action:

Series 07 licenses must be obtained through the person transfer and location transfer of an existing license from another business. Omar Castro has started a new business which requires a Series 07 (Beer and Wine Bar) license. The location transfer is from another Flagstaff business previously owned by Omar Castro, which has now closed: "Pizza By George Italian Restaurant Pizzeria". The person transfer is from Omar Castro as an individual to Durango Management Inc. dba Cyndie's Italian Restaurant and Pizzeria.

#### Financial Impact:

There is no budgetary impact to the City of Flagstaff.

#### Connection to Council Goal:

Effective governance - regulatory action.

**Has There Been Previous Council Decision on This:**

Not applicable.

**Options and Alternatives**

- o Table the item if additional information or time is needed.
- o Make no recommendation.
- o Forward the application to the State with a recommendation for approval.
- o Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

**Background/History:**

- An application for a person transfer and location transfer Series 07 liquor license was received from Omar Castro for Cyndie's Pizza, 2116 E. Route 66. The location transfer is from another Flagstaff business previously owned by Omar Castro which has now closed: "Pizza By George Italian Restaurant Pizzeria". The person transfer is from Omar Castro as an individual to Durango Management Inc. dba Cyndie's Italian Restaurant and Pizzeria.
- A background investigation performed by Sgt. Matt Wright of the Flagstaff Police Department resulted in a recommendation for approval.
- A background investigation performed by Gregory Brooks, Code Compliance Officer II, resulted in no active code violations being reported.
- Sales tax and licensing information was reviewed by Ranbir Cheema, Tax, Licensing & Revenue Manager, resulting in a recommendation for approval.

**Key Considerations:**

- Because the application is for a person transfer and a location transfer, consideration may be given both to the applicant's personal qualifications, and the location.
- A Series 07 beer and wine bar license allows a beer and wine bar retailer to sell and serve beer and wine, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.
- The deadline for issuing a recommendation on this application is August 1, 2012.
- The applicant is not required to provide the distance between the applicant's business and the nearest church or school for government (Series 05), hotel/motel (Series 11), or restaurant, (Series 12) liquor license applications; the State does not require a geological map or list of licenses in the vicinity for any license series.

**Community Benefits and Considerations:**

- This business will contribute to the tax base of the community.
- We are not aware of any other relevant considerations.

**Community Involvement:**

- The application was properly posted on June 14, 2012.
- No written protests have been received to date.

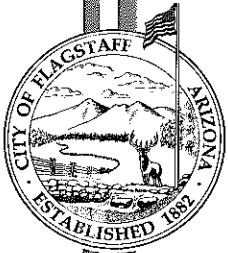
**Expanded Options and Alternatives:**

- (1) Table the item if additional information or time is needed.
- (2) Make no recommendation.
- (3) Forward the application to the State with a recommendation for approval.
- (4) Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

**Date of Council Approval:**

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**Attachments:**    Cyndie's Pizza Letter to Applicant  
                         Cyndie's Pizza Hearing Procedures  
                         Cyndie's Pizza Series Description  
                         Cyndie's Pizza Section 13  
                         Cyndie's Pizza Police Memo  
                         Cyndie's Pizza Code Memo  
                         Cyndie's Pizza Tax Memo



# City of Flagstaff

OFFICE OF THE CITY CLERK

July 5, 2012

Omar Castro  
c/o Cyndie's Pizza  
2116 E. Route 66  
Flagstaff, AZ 86004

Dear Mr. Castro:

Your application for a person and location transfer Series 07 liquor license for Cyndie's Pizza at 2116 E. Route 66 was posted on June 14, 2012. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on Tuesday, July 17, 2012 which begins at **noon**.

It is important that you or your representative attend this Council Meeting to make a presentation on your application and to answer any questions that the City Council may have. Failure to make a presentation could result in a recommendation for denial of your application. We suggest that you contact your legal counsel or the Department of Liquor Licenses and Control at 602-542-5141 to determine the criteria for your license and to make a presentation on that information, as well as stating whether or not you have attended the necessary training, whether or not you have had a business prior to this one, and, if so, the kinds of business(es) you have operated. To help you understand how the public hearing process will be conducted, we are enclosing a copy of the City's liquor license application hearing procedures.

The twenty-day posting period for your liquor license application expired on July 4, 2012, and the application may be removed from the premises.

If you have any questions, please feel free to call me at 928-213-2066.

Sincerely,

Susan Alden  
City Records Technician

Enclosure

Arizona Relay Service 7-1-1

211 West Aspen Avenue, Flagstaff, Arizona 86001  
Main & TDD (928) 774-5281 • Fax (928) 779-7696







# City of Flagstaff

## Liquor License Application Hearing Procedures

1. When the matter is reached at the Council meeting, the presiding officer will accept a motion to open the public hearing on the item.
2. The presiding officer will request that the Applicant come forward to address the Council regarding the application in a presentation not exceeding ten (10) minutes: Council may question the Applicant regarding the testimony or other evidence provided by the Applicant.
3. The presiding officer will then ask whether City staff have information to present to the Council regarding the application. Staff should come forward at this point and present information to the Council in a presentation not exceeding ten (10) minutes. Council may question City staff regarding the testimony or other evidence provided by City staff.
4. Other parties, if any, may then testify, limited to three (3) minutes per person. Council may question these parties regarding the testimony they present to the Council.
5. The Applicant may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of the Applicant.
6. City staff may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of City Staff.
7. By motion, Council will then close the public hearing.
8. By motion, the Council will then vote to forward the application to the State with a recommendation of approval, disapproval, or shall vote to forward with no recommendation.

## License Types: Series 07 Beer and Wine Bar License

Transferable (From person to person and/or location to location within the same county only)

On & off-sale retail privileges

Note: Terms in **BOLD CAPITALS** are defined in the [glossary](#).

### PURPOSE:

Allows a beer and wine bar retailer to sell and serve beer and wine, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

### ADDITIONAL RIGHTS AND RESPONSIBILITIES:

A retailer with off-sale privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. Payment must be made no later than the time of **DELIVERY**. The retailer must complete a Department approved "Record of Delivery" form for each spirituous liquor retail delivery.

On any original applications, new managers and/or the person responsible for the day-to-day operations must attend a basic and management training class.

A licensee acting as a **RETAIL AGENT**, authorized to purchase and accept delivery of spirituous liquor by other licensees, must receive a certificate of registration from the Department.

A **PREGNANCY WARNING SIGN** for pregnant women consuming spirituous liquor must be posted within twenty (20) feet of the cash register or behind the bar.

A log must be kept by the licensee of all persons employed at the premises including each employee's name, date and place of birth, address and responsibilities.

Off-sale ("To Go") package sales can be made on the bar premises as long as the area of off-sale operation does not utilize a separate entrance and exit from the one provided for the bar.

Bar, beer and wine bar and restaurant licensees must pay an annual surcharge of \$20.00. The money collected from these licensees will be used by the Department for an auditor to review compliance by restaurants with the restaurant licensing provisions of ARS 4-205.02.

**SECTION 12 Location to Location Transfer: (Bars and Liquor Stores ONLY)**

APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE

1. Current Business: Name Pizza By George Italian Restaurant Pizzeria  
(Exactly as it appears on license) Address 5200 E. COLTAND BLVD STE C6-C7 FLAGSTAFF, AZ 86004
2. New Business: Name CYNDIE'S PIZZERIA Pizza  
(Physical Street Location) Address 2116 E. RT 66 FLAGSTAFF, AZ 86004
3. License Type: Series 7 Beer & Wine Bar License Number: 07030050
4. If more than one license to be transferred: License Type: \_\_\_\_\_ License Number: \_\_\_\_\_
5. What date do you plan to move? 3/12/12 What date do you plan to open? 4/1/12

**SECTION 13 Questions for all in-state applicants excluding those applying for government, hotel/motel, and restaurant licenses (series 5, 11, and 12):**

A.R.S. § 4-207 (A) and (B) state that no retailer's license shall be issued for any premises which are at the time the license application is received by the director, within three hundred (300) horizontal feet of a church, within three hundred (300) horizontal feet of a public or private school building with kindergarten programs or grades one (1) through (12) or within three hundred (300) horizontal feet of a fenced recreational area adjacent to such school building. The above paragraph DOES NOT apply to:

- a) Restaurant license (§ 4-205.02) c) Government license (§ 4-205.03)  
b) Hotel/motel license (§ 4-205.01) d) Fenced playing area of a golf course (§ 4-207 (B)(5))

1. Distance to nearest school: .08 miles Name of school Killup Elementary School  
Address 2300 E. 6<sup>th</sup> AVE. FLAGSTAFF AZ 86004  
City, State, Zip
2. Distance to nearest church: .2 miles Name of church HARVEST Fellowship  
Address 2290 E. US-66, FLAGSTAFF, AZ 86004  
City, State, Zip
3. I am the: ☐ Lessee ☐ Sublessee ☐ Owner ☒ Purchaser (of premises)
4. If the premises is leased give lessors: Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip
- 4a. Monthly rental/lease rate \$ \_\_\_\_\_ What is the remaining length of the lease \_\_\_ yrs. \_\_\_ mos.
- 4b. What is the penalty if the lease is not fulfilled? \$ \_\_\_\_\_ or other \_\_\_\_\_  
(give details - attach additional sheet if necessary)
5. What is the total business indebtedness for this license/location excluding the lease? \$ 0  
Please list lenders you owe money to.

Last	First	Middle	Amount Owed	Mailing Address	City	State	Zip
NONE							

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for (be specific)? Restaurant - TAKE OUT Delivery

## **MEMORANDUM**

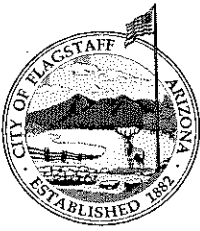
**Memo # 12-093-01**

**To** Chief Kevin Treadway  
**From** Sgt. M. Wright  
**Date** June 18, 2012  
**Ref** Series 7 Liquor License –Person and Location Transfer-Application for Cyndie's Pizza

On June 18, 2012, I initiated an investigation into a series 7 (beer and wine) liquor license person and location transfer application filed by Omar Castro (Controlling Person/Agent) and George Winko (Controlling Person). Omar Castro and George Winko are new owners of Cyndie's Pizza. Cyndie's Pizza is located at 2116 E. Rt. 66 in Flagstaff. Cyndie's Pizza is located more than 300 feet from the nearest school and church. The series 7 license number being applied for is #07030050 a beer and wine license.

I conducted a local records query and public access check on Omar and George which revealed no derogatory records. I found Omar Castro would be responsible for day to day operations of the business. I called and spoke with Omar who advised he and George had completed the liquor class provided by the Department of Liquor Licenses and Control and provided proof. Omar advised he has owned a series 12 liquor license for Cilantros which has since closed. Omar advised he had only received one liquor law violation from the Arizona Department of Liquor License and Control. Omar said his violation occurred between 2003 and 2004 for buying beer from Sam's Club who was not a licensed distributor. Omar is requesting to change the names and business location for his current license he owns for Pizza by George. Pizza by George has closed.

At this time the Flagstaff Police Department makes a recommendation for approval.



## Planning and Development Services Memorandum

**June 15, 2012**

**TO:** Susan Alden, City Records Technician

**THROUGH:** Roger Eastman, AICP, Zoning Code Administrator

**FROM:** Gregory Brooks, Code Compliance Officer II

**RE:** Application for Liquor License #07030050  
2116 E. Rt. 66, Flagstaff, Arizona 86004  
Assessor's Parcel Number 107-12-005C  
Omar Castro on behalf of Cyndie's Pizza

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This application is a request for a Series 07 (beer and wine only) liquor license location and person transfer from Omar Castro on behalf of Cyndie's Pizza, located in the Highway Commercial (HC) Zone. This zone allows for beer and wine bars.

This is a person and a location transfer liquor license.

There are no active zoning code violations associated with Omar Castro or Cyndie's Pizza at this time.

This Liquor License is recommended for approval.

# Memo

To: Susan Alden, City Records Technician

From: Ranbir Cheema - Tax, Licensing & Revenue Manager

*RSC*

Date: June 15, 2012

Re: Series 07 Liquor License – Person and location transfer – Cyndie's Pizza

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Durango Management Inc DBA Cyndie's Pizza with Omar Castro as its CEO, is properly licensed with the City. They are current in their sales tax reporting and remittance. Currently, they are in compliance with the sales tax and licensing requirements of the City.

/liquor licenses/Cyndie's Pizza.doc

## 4. C.

### CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Susan Alden, City Records Technician  
**Date:** 06/08/2012  
**Meeting Date:** 07/17/2012



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#### TITLE:

**Consideration and Action on Liquor License Application:** Justin Volkenant, "Bun Huggers", 901 S. Milton Road, Suite A, Series 12, New License.

#### RECOMMENDED ACTION:

Open the public hearing.  
Receive citizen input.  
Close the public hearing.

The City Council has the option to:

- (1) Forward the application to the State with a recommendation for approval;
- (2) Forward the application to the State with no recommendation; or
- (3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

#### Policy Decision or Reason for Action:

Policy Decision or Reason for Action: Justin Volkenant is in the process of acquiring Bun Huggers from the current owner. Series 12 (restaurant) licenses are non-transferable, so a new Series 12 license is required in order for the applicant to serve alcoholic beverages once the acquisition has been completed.

#### Financial Impact:

There is no budgetary impact to the City of Flagstaff.

#### Connection to Council Goal:

Effective governance through regulatory action.

#### Has There Been Previous Council Decision on This:

Not applicable.

### **Options and Alternatives**

- o Table the item if additional information or time is needed.
- o Make no recommendation.
- o Forward the application to the State with a recommendation for approval.
- o Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

### **Background/History:**

- An application for a new Series 12 liquor license was received from Justin Volkenant for Bun Huggers, 901 S. Milton Road, Suite A.
- A background investigation performed by Sgt. Matt Wright of the Flagstaff Police Department resulted in a recommendation for approval.
- A background investigation performed by Gregory Brooks, Code Compliance Officer II, resulted in no active code violations being reported.
- Sales tax and licensing information was reviewed by Ranbir Cheema, Tax, Licensing & Revenue Manager. Mr. Cheema has contacted the applicant, and has indicated that the applicant will obtain a City sales tax license once the acquisition process is completed. Mr. Cheema recommends approval of the application.

### **Key Considerations:**

- Because the application is for a new license, consideration may be given to both the location and the applicant's personal qualifications.
- A Series 12 license allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.
- The deadline for issuing a recommendation on this application is August 17, 2012.
- The applicant is not required to provide the distance between the applicant's business and the nearest church or school for government (Series 05), hotel/motel (Series 11), or restaurant, (Series 12) liquor license applications; the State does not require a geological map or list of licenses in the vicinity for any license series.

### **Community Benefits and Considerations:**

- This business will contribute to the tax base of the community.
- We are not aware of any other relevant considerations.

### **Community Involvement:**

- The application was properly posted on June 25, 2012.
- No written protests have been received to date.

### **Expanded Options and Alternatives:**

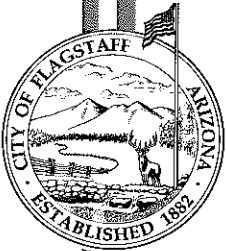


- (1) Table the item if additional information or time is needed.
- (2) Make no recommendation.
- (3) Forward the application to the State with a recommendation for approval.
- (4) Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

**Date of Council Approval:**

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**Attachments:**    Bun Huggers Letter to Applicant  
                         Bun Huggers Hearing Procedures  
                         Bun Huggers Series Description  
                         Bun Huggers Police Memo  
                         Bun Huggers Code Memo  
                         Bun Huggers Tax Memo



# City of Flagstaff

OFFICE OF THE CITY CLERK

July 2, 2012

Justin Volkenant  
c/o Bun Huggers  
901 S. Milton Road, Suite A  
Flagstaff, AZ 86001

Dear Mr. Volkenant:

Your application for a new Series 12 liquor license for Bun Huggers at 901 S. Milton Road was posted on June 25, 2012. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on Tuesday, July 17, 2012 which begins at noon.

It is important that you or your representative attend this Council Meeting to make a presentation on your application and to answer any questions that the City Council may have. Failure to make a presentation could result in a recommendation for denial of your application. We suggest that you contact your legal counsel or the Department of Liquor Licenses and Control at 602-542-5141 to determine the criteria for your license and to make a presentation on that information, as well as stating whether or not you have attended the necessary training, whether or not you have had a business prior to this one, and, if so, the kinds of business(es) you have operated. To help you understand how the public hearing process will be conducted, we are enclosing a copy of the City's liquor license application hearing procedures.

The twenty-day posting period for your liquor license application will expire on July 15, 2012, and the application may be removed from the premises at any time.

If you have any questions, please feel free to call me at 928-213-2066.

Sincerely,

Susan Alden  
City Records Technician

Enclosure

Arizona Relay Service 7-1-1

211 West Aspen Avenue, Flagstaff, Arizona 86001  
Main & TDD (928) 774-5281 • Fax (928) 779-7696





# City of Flagstaff

## Liquor License Application Hearing Procedures

1. When the matter is reached at the Council meeting, the presiding officer will accept a motion to open the public hearing on the item.
2. The presiding officer will request that the Applicant come forward to address the Council regarding the application in a presentation not exceeding ten (10) minutes. Council may question the Applicant regarding the testimony or other evidence provided by the Applicant.
3. The presiding officer will then ask whether City staff have information to present to the Council regarding the application. Staff should come forward at this point and present information to the Council in a presentation not exceeding ten (10) minutes. Council may question City staff regarding the testimony or other evidence provided by City staff.
4. Other parties, if any, may then testify, limited to three (3) minutes per person. Council may question these parties regarding the testimony they present to the Council.
5. The Applicant may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of the Applicant.
6. City staff may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of City Staff.
7. By motion, Council will then close the public hearing.
8. By motion, the Council will then vote to forward the application to the State with a recommendation of approval, disapproval, or shall vote to forward with no recommendation.

## License Types: Series 12 Restaurant License

Non-transferable

On-sale retail privileges

Note: Terms in **BOLD CAPITALS** are defined in the glossary.

---

### PURPOSE:

Allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.

### ADDITIONAL RIGHTS AND RESPONSIBILITIES:

An applicant for a restaurant license must file a copy of its restaurant menu and Restaurant Operation Plan with the application. The Plan must include listings of all restaurant equipment and service items, the restaurant seating capacity, and other information requested by the department to substantiate that the restaurant will operate in compliance with Title 4.

The licensee must notify the Department, in advance, of any proposed changes in the seating capacity of the restaurant or dimensions of a restaurant facility.

A restaurant licensee must maintain complete restaurant services continually during the hours of selling and serving of spirituous liquor, until at least 10:00 p.m. daily, if any spirituous liquor is to be sold and served up to 2:00 a.m.

On any original applications, new managers and/or the person responsible for the day-to-day operations must attend a basic and management training class.

A licensee acting as a **RETAIL AGENT**, authorized to purchase and accept **DELIVERY** of spirituous liquor by other licensees, must receive a certificate of registration from the Department.

A **PREGNANCY WARNING SIGN** for pregnant women consuming spirituous liquor must be posted within twenty (20) feet of the cash register or behind the bar.

A log must be kept by the licensee of all persons employed at the premises including each employee's name, date and place of birth, address and responsibilities.

Bar, beer and wine bar, and restaurant licensees must pay an annual surcharge of \$20.00. The money collected from these licensees will be used by the Department for an auditor to review compliance by restaurants with the restaurant licensing provisions of ARS 4-205.02.

## **MEMORANDUM**

**Memo # 12-099-01**

**TO: Chief Kevin Treadway**

**FROM: Sgt. Matt Wright**

**DATE: June 28, 2012**

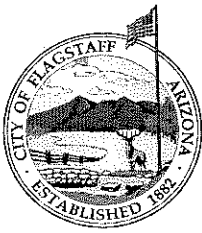
**RE: LIQUOR LICENSE APPLICATION – SERIES 12- FOR “Bun Huggers”**

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On June 28, 2012, I initiated an investigation into an application for a series 12 liquor license filed by Justin James Volkenant (Controlling Person and Agent) on behalf of Bun Huggers. Justin Volkenant is the new owner of Bun Huggers. The restaurant is located at 901 S. Milton Road in Flagstaff. Justin plans to run the day to day operations. This is an application for a new series 12 license #12033327.

I conducted a query through local systems and public access on Justin Volkenant. Justin was found to have been arrested for and plead guilty to a DUI charge in 2005. No other criminal records were found. I spoke with Justin Volkenant who stated he has completed the mandatory liquor license training course and provided proof. Justin said he is the new owner of Bun Huggers and has never had a liquor license before. Justin stated he has no pending liquor law violations.

As a result of this investigation, I can find no reason to oppose this series 12 liquor license application. Recommendation to Council would be for approval.



## Planning and Development Services Memorandum

June 20, 2012

TO: Susan Alden, City Records Technician

THROUGH: Mark Sawyers, AICP, Current Planning Manager

FROM: Gregory Brooks, Code Compliance Officer II

RE: Application for Liquor License #12033327  
901 S. Milton Rd., Flagstaff, Arizona  
Assessor's Parcel Number 103-02-014  
Justin Volkenant on behalf of Bun Huggers

---

This application is a request for a Series 12 (Restaurant) new liquor license from Justin Volkenant on behalf of Bun Huggers, located in the Highway Commercial (HC) Zone. This district allows for Restaurants.

This is a new liquor license.

There are no active code violations associated with Justin Volkenant or the Bun Huggers at this time.

This Liquor License is recommended for approval.

# Memo

To: Susan Alden, City Records Technician

From: Ranbir Cheema - Tax, Licensing & Revenue Manager



Date: June 27, 2012

Re: Series 12 Liquor License – New License – Bun Huggers

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JBSC LLC DBA Bun Huggers with Justin Volkenant as its Managing Member is in process of acquiring this business. Transfer of this business from the current owner to JBSC LLC has not yet been finalized and is contingent upon liquor license approval and other matters.

The current owner is properly licensed and compliant with the requirements of the Sales Tax Section of the City. When this business is transferred to JBSC LLC, Mr. Volkenant intends to obtain City Sales Tax license and properly report and remit sales tax. I do not foresee any issues with this and have no reason to hold up the liquor license approval.

/liquor licenses/Bun Huggers.doc

## 4. D.

### CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Susan Alden, City Records Technician  
**Date:** 06/08/2012  
**Meeting Date:** 07/17/2012



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#### TITLE:

**Consideration and Action on Liquor License Application:** Glenn Meinen, "Cyrano's Seafood & Chophouse", 1850 N. Fort Valley Road, Series 12, New License.

#### RECOMMENDED ACTION:

Open the public hearing.  
Receive citizen input.  
Close the public hearing.

The City Council has the option to:

- (1) Forward the application to the State with a recommendation for approval;
- (2) Forward the application to the State with no recommendation; or
- (3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

#### Policy Decision or Reason for Action:

Policy Decision or Reason for Action: Glenn Meinen has opened Cyrano's Seafood & Chophouse, which is a new business in a new location. This requires a new Series 12 (restaurant) license.

#### Financial Impact:

There is no budgetary impact to the City of Flagstaff.

#### Connection to Council Goal:

Effective governance/regulatory action.

#### Has There Been Previous Council Decision on This:



Not applicable.

### **Options and Alternatives**

- o Table the item if additional information or time is needed.
- o Make no recommendation.
- o Forward the application to the State with a recommendation for approval.
- o Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

### **Background/History:**

- An application for a new Series 12 liquor license was received from Glenn Meinen for Cyrano's , 1850 N. Fort Valley Road.
- A background investigation performed by Sgt. Matt Wright of the Flagstaff Police Department resulted in a recommendation for approval.
- A background investigation performed by Gregory Brooks, Code Compliance Officer II, resulted in no active code violations being reported.
- Sales tax and licensing information was reviewed by Ranbir Cheema, Tax, Licensing & Revenue Manager, who stated that the business is in compliance with the tax and licensing requirements of the City.

### **Key Considerations:**

- Because the application is for a new license, consideration may be given to both the location and the applicant's personal qualifications.
- A Series 12 license allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.
- The deadline for issuing a recommendation on this application is August 6, 2012.
- The applicant is not required to provide the distance between the applicant's business and the nearest church or school for government (Series 05), hotel/motel (Series 11), or restaurant, (Series 12) liquor license applications; and the State does not require a geological map or list of licenses in the vicinity for any license series.

### **Community Benefits and Considerations:**

- This business will contribute to the tax base of the community.
- We are not aware of any other relevant considerations.

### **Community Involvement:**

- The application was properly posted on June 20, 2012.
- No written protests have been received to date.

### **Expanded Options and Alternatives:**

- (1) Table the item if additional information or time is needed.
- (2) Make no recommendation.
- (3) Forward the application to the State with a recommendation for approval.
- (4) Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

**Date of Council Approval:**

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**Attachments:**    Cyrano's Letter to Applicant  
                         Cyrano's Hearing Procedures  
                         Cyrano's Series Description  
                         Cyrano's Police Memo  
                         Cyrano's Code Memo  
                         Cyrano's Tax Memo

OFFICE OF THE CITY CLERK

July 2, 2012

Glenn Menein  
2339 N. Carefree Circle  
Flagstaff, AZ 86004

Dear Mr. Menein:

Your application for a new Series 12 liquor license for Cyrano's Seafood & Chophouse at 1850 N. Fort Valley Road was posted on June 20, 2012. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on Tuesday, July 17, 2012 which begins at noon.

It is important that you or your representative attend this Council Meeting to make a presentation on your application and to answer any questions that the City Council may have. Failure to make a presentation could result in a recommendation for denial of your application. We suggest that you contact your legal counsel or the Department of Liquor Licenses and Control at 602-542-5141 to determine the criteria for your license and to make a presentation on that information, as well as stating whether or not you have attended the necessary training, whether or not you have had a business prior to this one, and, if so, the kinds of business(es) you have operated. To help you understand how the public hearing process will be conducted, we are enclosing a copy of the City's liquor license application hearing procedures.

The twenty-day posting period for your liquor license application will expire on July 10, 2012, and the application may be removed from the premises at any time.

If you have any questions, please feel free to call me at 928-213-2066.

Sincerely,

Susan Alden  
City Records Technician

Enclosure



# City of Flagstaff

## Liquor License Application Hearing Procedures

1. When the matter is reached at the Council meeting, the presiding officer will accept a motion to open the public hearing on the item.
2. The presiding officer will request that the Applicant come forward to address the Council regarding the application in a presentation not exceeding ten (10) minutes. Council may question the Applicant regarding the testimony or other evidence provided by the Applicant.
3. The presiding officer will then ask whether City staff have information to present to the Council regarding the application. Staff should come forward at this point and present information to the Council in a presentation not exceeding ten (10) minutes. Council may question City staff regarding the testimony or other evidence provided by City staff.
4. Other parties, if any, may then testify, limited to three (3) minutes per person. Council may question these parties regarding the testimony they present to the Council.
5. The Applicant may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of the Applicant.
6. City staff may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of City Staff.
7. By motion, Council will then close the public hearing.
8. By motion, the Council will then vote to forward the application to the State with a recommendation of approval, disapproval, or shall vote to forward with no recommendation.

## License Types: Series 12 Restaurant License

Non-transferable

On-sale retail privileges

Note: Terms in **BOLD CAPITALS** are defined in the glossary.

---

### PURPOSE:

Allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.

### ADDITIONAL RIGHTS AND RESPONSIBILITIES:

An applicant for a restaurant license must file a copy of its restaurant menu and Restaurant Operation Plan with the application. The Plan must include listings of all restaurant equipment and service items, the restaurant seating capacity, and other information requested by the department to substantiate that the restaurant will operate in compliance with Title 4.

The licensee must notify the Department, in advance, of any proposed changes in the seating capacity of the restaurant or dimensions of a restaurant facility.

A restaurant licensee must maintain complete restaurant services continually during the hours of selling and serving of spirituous liquor, until at least 10:00 p.m. daily, if any spirituous liquor is to be sold and served up to 2:00 a.m.

On any original applications, new managers and/or the person responsible for the day-to-day operations must attend a basic and management training class.

A licensee acting as a **RETAIL AGENT**, authorized to purchase and accept **DELIVERY** of spirituous liquor by other licensees, must receive a certificate of registration from the Department.

A **PREGNANCY WARNING SIGN** for pregnant women consuming spirituous liquor must be posted within twenty (20) feet of the cash register or behind the bar.

A log must be kept by the licensee of all persons employed at the premises including each employee's name, date and place of birth, address and responsibilities.

Bar, beer and wine bar, and restaurant licensees must pay an annual surcharge of \$20.00. The money collected from these licensees will be used by the Department for an auditor to review compliance by restaurants with the restaurant licensing provisions of ARS 4-205.02.

**MEMORANDUM**

**Memo # 12-098-01**

**TO: Chief Kevin Treadway**

**FROM: Sgt. Matt Wright**

**DATE: June 28, 2012**

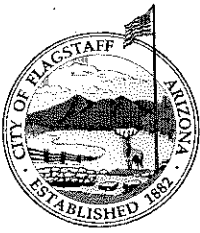
**RE: LIQUOR LICENSE APPLICATION – SERIES 12- FOR “Cyrano’s Seafood and Chophouse”**

---

On June 28, 2012, I initiated an investigation into an application for a series 12 liquor license filed by Glenn Scott Menein (Controlling Person) on behalf of Cyrano’s Seafood and Chophouse. The restaurant is located at 1850 N. Fort Valley Road in Flagstaff. Glenn will run the day to day operations. This is an application for a new series 12 license #12033326.

I conducted a query through local systems and public access on Glenn Menein and no derogatory records were found. I spoke with Glenn Menein who stated he has completed the mandatory liquor license training course and provided proof. Glenn said he currently is the Director of Operations for the Lumberyard Brewing Company and Beaver Street Brewery both located in Flagstaff. Glenn stated he has no past or pending liquor law violations at either business.

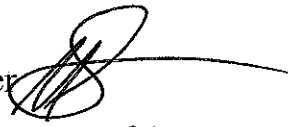
As a result of this investigation, I can find no reason to oppose this series 12 liquor license application. Recommendation to Council would be for approval.




## Planning and Development Services Memorandum

**June 20, 2012**

**TO:** Susan Alden, City Records Technician

**THROUGH:** Mark Sawyers, AICP, Current Planning Manager 

**FROM:** Gregory Brooks, Code Compliance Officer II 

**RE:** Application for Liquor License #07033326  
1850 N. Fort Valley Rd., Flagstaff, Arizona 86001  
Assessor's Parcel Number 102-07-001B  
Glenn Menein on behalf of Cyrano's Seafood & Chophouse

---

This application is a request for a Series 12 (Restaurant) liquor license transfer from Glenn Menein on behalf of Cyrano's Seafood & Chophouse, located in the Suburban Commercial (SC) Zone. This district allows for Restaurants.

This is a new individual liquor license.

There are no active code violations associated with Glenn Menein or Cyrano's Seafood & Chophouse at this time.

This Liquor License is recommended for approval.

# Memo

To: Susan Alden, City Records Technician

From: Ranbir Cheema - Tax, Licensing & Revenue Manager



Date: June 27, 2012

Re: Series 12 Liquor License – New License – Cyrano's Seafood & Chophouse

---

Invictus Concepts Inc DBA Cyrano's Seafood and Chophouse with Mr. Glenn S Menein as its Managing Member is properly licensed with the City. They are not scheduled to open until July 1, 2012 therefore they are not yet required to file a tax return or remit sales tax. Currently this business is compliant with the sales tax and licensing requirements of the City.

/liquor licenses/Cyrano.doc



## 4. E.

### CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Susan Alden, City Records Technician  
**Date:** 06/14/2012  
**Meeting Date:** 07/17/2012



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#### TITLE:

**Consideration and Action on Liquor License Application:** Mark Wagner, "Chevron", 1785 S. Railroad Springs Blvd., Series 09, Person Transfer.

#### RECOMMENDED ACTION:

Open the public hearing.  
Receive citizen input.  
Close the public hearing.

The City Council has the option to:

- (1) Forward the application to the State with a recommendation for approval;
- (2) Forward the application to the State with no recommendation; or
- (3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

#### Policy Decision or Reason for Action:

Series 09 (Liquor Store) licenses are obtained through the person transfer of an existing license from another business. Mark Wagner has started a new business which requires a Series 09 license. The person transfer is from Cesar Lizarraga, owner of the previous business at this location, Whistle Stop.

#### Financial Impact:

There is no budgetary impact to the City of Flagstaff.

#### Connection to Council Goal:

Effective governance - regulatory action.

#### Has There Been Previous Council Decision on This:

Not applicable.

### **Options and Alternatives**

- o Table the item if additional information or time is needed.
- o Make no recommendation.
- o Forward the application to the State with a recommendation for approval.
- o Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

### **Background/History:**

- An application for a person transfer Series 09 liquor license was received from Mark Wagner for Chevron, 1785 S. Railroad Springs Blvd. The person transfer is from Cesar Lizarraga, who owned the previous business at this location, Whistle Stop.
- A background investigation performed by Sgt. Matt Wright of the Flagstaff Police Department resulted in a recommendation for approval.
- A background investigation performed by Gregory Brooks, Code Compliance Officer II, resulted in no active code violations being reported.
- Sales tax and licensing information was reviewed by Ranbir Cheema, Tax, Licensing & Revenue Manager, resulting in a recommendation for approval.

### **Key Considerations:**

- Because the application is for a person transfer only, consideration may be given only to the applicant's personal qualifications, not the location.
- A Series 09 (Liquor Store) license allows a spirituous liquor store retailer to sell all spirituous liquors, only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises.
- The deadline for issuing a recommendation on this application is August 14, 2012.
- The applicant is not required to provide the distance between the applicant's business and the nearest church or school for government (Series 05), hotel/motel (Series 11), or restaurant, (Series 12) liquor license applications; the State does not require a geological map or list of licenses in the vicinity for any license series.

### **Community Benefits and Considerations:**

- This business will contribute to the tax base of the community.
- We are not aware of any other relevant considerations.

### **Community Involvement:**

- The application was properly posted on June 21, 2012.
- No written protests have been received to date.

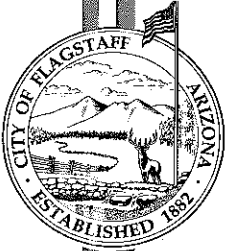
### **Expanded Options and Alternatives:**

- (1) Table the item if additional information or time is needed.
- (2) Make no recommendation.
- (3) Forward the application to the State with a recommendation for approval.
- (4) Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

**Date of Council Approval:**

---

**Attachments:**    Chevron Letter to Applicant  
                         Chevron Hearing Procedures  
                         Chevron Series Description  
                         Chevron Section 13  
                         Chevron Police Memo  
                         Chevron Code Memo  
                         Chevron Tax Memo



# City of Flagstaff

OFFICE OF THE CITY CLERK

July 2, 2012

Mark Wagner  
c/o Butler Chevron  
2295 E. Butler Ave.  
Flagstaff, AZ 86004

Dear Mr. Wagner:

Your application for a new Series 09 liquor license for Chevron at 1785 S. Railroad Springs Blvd. was posted on June 21, 2012. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on Tuesday, July 17, 2012 which begins at noon.

It is important that you or your representative attend this Council Meeting to make a presentation on your application and to answer any questions that the City Council may have. Failure to make a presentation could result in a recommendation for denial of your application. We suggest that you contact your legal counsel or the Department of Liquor Licenses and Control at 602-542-5141 to determine the criteria for your license and to make a presentation on that information, as well as stating whether or not you have attended the necessary training, whether or not you have had a business prior to this one, and, if so, the kinds of business(es) you have operated. To help you understand how the public hearing process will be conducted, we are enclosing a copy of the City's liquor license application hearing procedures.

The twenty-day posting period for your liquor license application will expire on July 11, 2012, and the application may be removed from the premises after that date.

If you have any questions, please feel free to call me at 928-213-2066.

Sincerely,

Susan Alden  
City Records Technician

Enclosure





# City of Flagstaff

## Liquor License Application Hearing Procedures

1. When the matter is reached at the Council meeting, the presiding officer will accept a motion to open the public hearing on the item.
2. The presiding officer will request that the Applicant come forward to address the Council regarding the application in a presentation not exceeding ten (10) minutes. Council may question the Applicant regarding the testimony or other evidence provided by the Applicant.
3. The presiding officer will then ask whether City staff have information to present to the Council regarding the application. Staff should come forward at this point and present information to the Council in a presentation not exceeding ten (10) minutes. Council may question City staff regarding the testimony or other evidence provided by City staff.
4. Other parties, if any, may then testify, limited to three (3) minutes per person. Council may question these parties regarding the testimony they present to the Council.
5. The Applicant may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of the Applicant.
6. City staff may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of City Staff.
7. By motion, Council will then close the public hearing.
8. By motion, the Council will then vote to forward the application to the State with a recommendation of approval, disapproval, or shall vote to forward with no recommendation.

## License Types: Series 09 Liquor Store License (All spirituous liquors)

Transferable (From person to person and/or location to location within the same county only)

Off-sale retail privileges

Note: Terms in **BOLD CAPITALS** are defined in the [glossary](#).

---

### PURPOSE:

Allows a spirituous liquor store retailer to sell all spirituous liquors, only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises.

### ADDITIONAL RIGHTS AND RESPONSIBILITIES:

A retailer with off-sale privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. Payment must be made no later than the time of **DELIVERY**. The retailer must complete a Department approved "Record of Delivery" form for each spirituous liquor retail delivery.

On any original applications, new managers and/or the person responsible for the day-to-day operations must attend a basic and management training class.

A licensee acting as a **RETAIL AGENT**, authorized to purchase and accept delivery of spirituous liquor by other licensees, must receive a certificate of registration from the Department.

A **PREGNANCY WARNING SIGN** for pregnant women consuming spirituous liquor must be posted within twenty (20) feet of the cash register or behind the bar.

**SECTION 12 Location to Location Transfer: (Bars and Liquor Stores ONLY)**

APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE

1. Current Business: Name \_\_\_\_\_  
(Exactly as it appears on license) Address \_\_\_\_\_
2. New Business: Name \_\_\_\_\_  
(Physical Street Location) Address \_\_\_\_\_
3. License Type: \_\_\_\_\_ License Number: \_\_\_\_\_
4. If more than one license to be transferred: License Type: \_\_\_\_\_ License Number: \_\_\_\_\_
5. What date do you plan to move? \_\_\_\_\_ What date do you plan to open? \_\_\_\_\_

**SECTION 13 Questions for all in-state applicants excluding those applying for government, hotel/motel, and restaurant licenses (series 5, 11, and 12):**

A.R.S. § 4-207 (A) and (B) state that no retailer's license shall be issued for any premises which are at the time the license application is received by the director, within three hundred (300) horizontal feet of a church, within three hundred (300) horizontal feet of a public or private school building with kindergarten programs or grades one (1) through (12) or within three hundred (300) horizontal feet of a fenced recreational area adjacent to such school building. The above paragraph DOES NOT apply to:

- a) Restaurant license (§ 4-205.02) c) Government license (§ 4-205.03)  
b) Hotel/motel license (§ 4-205.01) d) Fenced playing area of a golf course (§ 4-207 (B)(5))

1. Distance to nearest school: 5280 ft. Name of school Pine Forest charter School  
Address 1120 West Kaibab Lane Flagstaff AZ 86001  
City, State, Zip
2. Distance to nearest church: 4224 ft. Name of church Flagstaff Tabernacle  
Address 1201 W Kaibab Lane Flagstaff AZ 86001  
City, State, Zip
3. I am the: ☒ Lessee ☐ Sublessee ☐ Owner ☐ Purchaser (of premises)
4. If the premises is leased give lessors: Name Win Oil Company  
Address 700 E Butler Ave Flagstaff AZ 86001  
City, State, Zip
- 4a. Monthly rental/lease rate \$ 4300.00 What is the remaining length of the lease 1 yrs. 8 mos.
- 4b. What is the penalty if the lease is not fulfilled? \$ 0 or other \_\_\_\_\_  
(give details - attach additional sheet if necessary)
5. What is the total business indebtedness for this license/location excluding the lease? \$ 0  
Please list lenders you owe money to.

Last	First	Middle	Amount Owed	Mailing Address	City State	Zip
N/A						

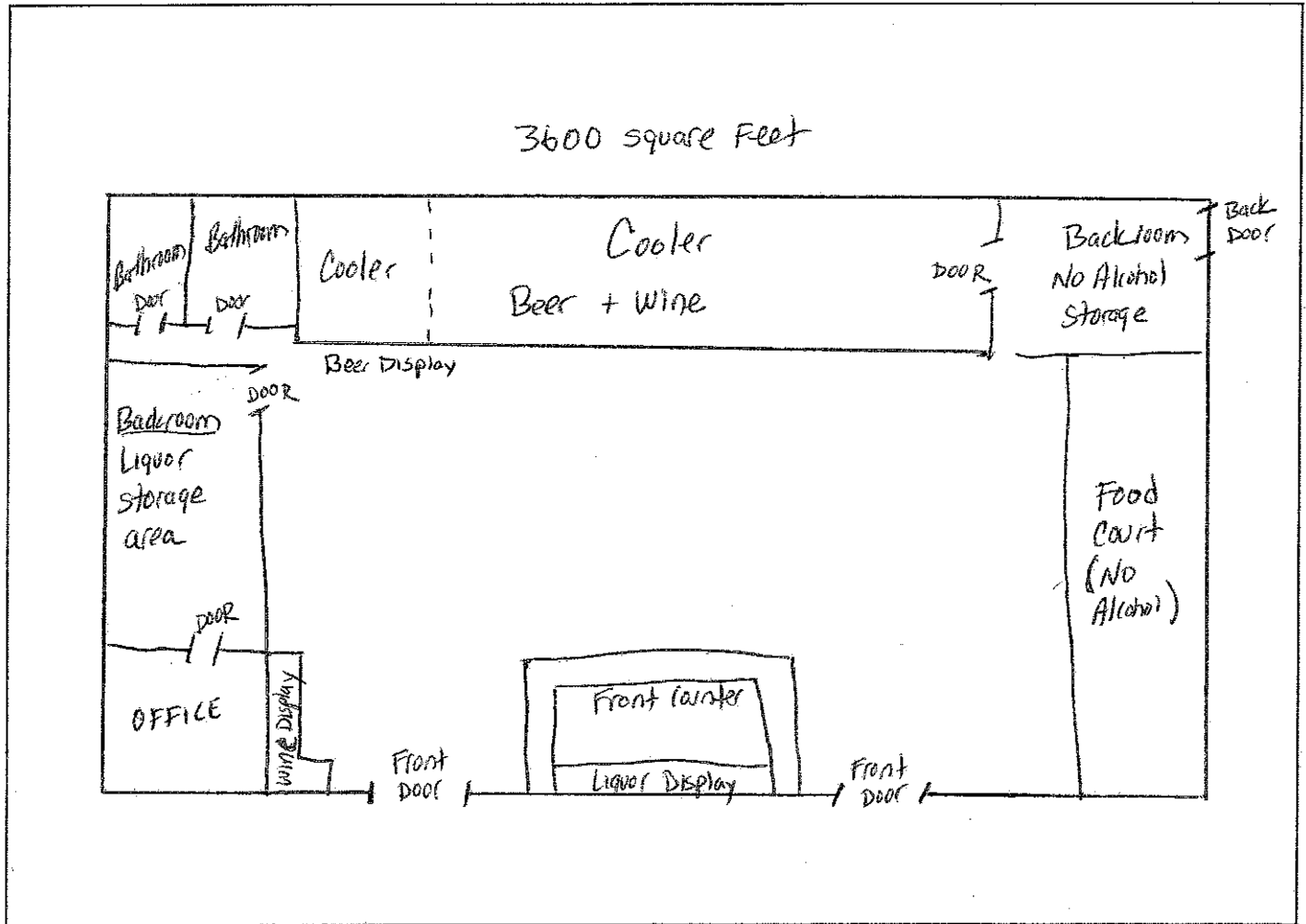
(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for (be specific)? Gas Station with Convenience Store

**SECTION 15** Diagram of Premises

4. In this diagram please show only the area where spirituous liquor is to be sold, served, consumed, dispensed, possessed or stored. It must show all entrances, exits, interior walls, bars, bar stools, hi-top tables, dining tables, dining chairs, the kitchen, dance floor, stage, and game room. Do not include parking lots, living quarters, etc. When completing diagram, North is up ←.

If a legible copy of a rendering or drawing of your diagram of premises is attached to this application, please write the words "diagram attached" in box provided below.

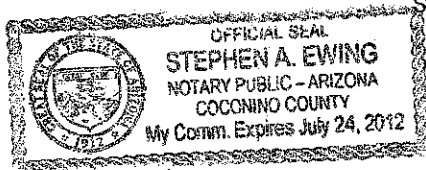


12 JUN 15 14P. LIC. PM 2 02

**SECTION 16** Signature Block

I, Mark David Wagner, hereby declare that I am the OWNER/AGENT filing this application as stated in Section 4, Question 1. I have read this application and verify all statements to be true, correct and complete.

X [Signature]  
(signature of applicant listed in Section 4, Question 1)



State of AZ County of Coconino

The foregoing instrument was acknowledged before me this

13 of June, 2012  
Day Month Year

[Signature]  
Signature of NOTARY PUBLIC

My commission expires on: 24 July 12  
Day Month Year



## MEMORANDUM

Memo #12-102-01

**TO: Chief Treadway**

**FROM: Sgt. Matt Wright #704**

**DATE: June 27, 2012**

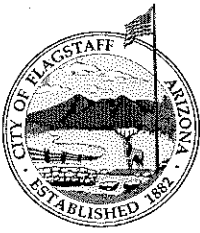
**RE: SERIES 09 PERSON TO PERSON TRANSFER OF EXISTING LIQUOR  
LICENSE FOR CHEVRON**

---

On June 27, 2012, I initiated an investigation into an application for a series 09 person to person transfer. The application was filed by Agent/Controlling Person, Mark Wagner and Controlling Person Beverly Ann Wagner. The store is located at 1785 S. Railroad Springs Blvd., in Flagstaff. This is an application to transfer the existing license 09030029 from the name of the previous owner (Cesar Lizarraga) to the current business owner and license applicants Mark and Beverly Wagner. The business name previously known as Whistle Stop is now Chevron and owned by Mark and Beverly Wagner.

A query through local systems and public access on Mark and Beverly Wagner showed no derogatory records. I spoke with Mark who confirmed the sale of the business. The business is located more than 300 feet from any church or school. Mark stated he has no pending or past liquor law violations and his current license for his Butler Chevron store is in good standing.


As a result of this investigation, I can find no reason to oppose this series 09 liquor license person to person transfer. Recommendation to Council would be for approval.

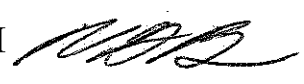


## Planning and Development Services Memorandum

**June 20, 2012**

**TO:** Susan Alden, City Records Technician

**THROUGH:** Mark Sawyers, AICP, Current Planning Manager 

**FROM:** Gregory Brooks, Code Compliance Officer II 

**RE:** Application for Liquor License #09030029  
1785 S. Railroad Springs Blvd, Flagstaff, Arizona 86001  
Assessor's Parcel Number 112-49-125A  
Mark Wagner on behalf of Chevron

---

This application is a request for a Series 09 (Liquor Store) person transfer liquor license from Mark Wagner on behalf of Chevron, located in the Highway Commercial (HC) Zone. This district allows for Liquor Stores.

This is a person transfer liquor license.

There are no active code violations associated with Mark Wagner or Chevron at this time.

This Liquor License is recommended for approval.

# Memo

To: Susan Alden, City Records Technician

From: Ranbir Cheema - Tax, Licensing & Revenue Manager

*RSC*

Date: June 27, 2012

Re: Series 09 Liquor License – Person Transfer – Chevron

---

Flagstaff Butler Chevron, LLC with Mark D Wagner as its Managing Member is properly licensed with the City and current with its tax return filing and remittance of sales tax. Currently, this business is in compliance with the sales tax and licensing requirements of the City.

//liquor licenses/Chevron – Railroad Springs.doc

## 4. F.

### CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Susan Alden, City Records Technician  
**Date:** 06/14/2012  
**Meeting Date:** 07/17/2012



---

#### TITLE:

**Consideration and Action on Liquor License Application:** H.J. Lewkowitz, "Museum of Northern Arizona", 3101 N. Fort Valley Road, Series 07, Person Transfer and Location Transfer.

#### RECOMMENDED ACTION:

Open the public hearing.  
Receive citizen input.  
Close the public hearing.

The City Council has the option to:

- (1) Forward the application to the State with a recommendation for approval;
- (2) Forward the application to the State with no recommendation; or
- (3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

#### Policy Decision or Reason for Action:

The Museum of Northern Arizona intends to serve alcoholic beverages (beer and wine only) during special and catered events at the museum, which requires a Series 07 (Beer and Wine Bar) license. Series 07 licenses must be obtained through the person transfer and location transfer of an existing license from another business. The person and location transfer is from Andrea Lewkowitz for Cost Plus World Market located at 5005 E. Market Place Drive, Suite 120.

#### Financial Impact:

There is no budgetary impact to the City of Flagstaff.

#### Connection to Council Goal:

Effective governance - regulatory action.

**Has There Been Previous Council Decision on This:**

No.

### **Options and Alternatives**

- o Table the item if additional information or time is needed.
- o Make no recommendation.
- o Forward the application to the State with a recommendation for approval.
- o Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

### **Background/History:**

- An application for a person transfer and location transfer Series 07 liquor license was received from H.J. Lewkowitz for the Museum of Northern Arizona, 3101 N. Fort Valley Road. The person and location transfer are from Andrea Lewkowitz for Cost Plus World Market at 5005 E. Market Place Drive, Suite 120.
- A background investigation performed by Sgt. Matt Wright of the Flagstaff Police Department resulted in a recommendation for approval.
- A background investigation performed by Gregory Brooks, Code Compliance Officer II, resulted in no active code violations being reported.
- Sales tax and licensing information was reviewed by Ranbir Cheema, Tax, Licensing & Revenue Manager, resulting in a recommendation for approval.

### **Key Considerations:**

- Because the application is for a person transfer and a location transfer, consideration may be given both to the applicant's personal qualifications, and the location.
- A Series 07 beer and wine bar license allows a beer and wine bar retailer to sell and serve beer and wine, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.
- The deadline for issuing a recommendation on this application is July 29, 2012.
- The applicant is not required to provide the distance between the applicant's business and the nearest church or school for government (Series 05), hotel/motel (Series 11), or restaurant, (Series 12) liquor license applications; the State does not require a geological map or list of licenses in the vicinity for any license series.

### **Community Benefits and Considerations:**

- This business will contribute to the tax base of the community.
- We are not aware of any other relevant considerations.

### **Community Involvement:**

- The application was properly posted on June 22, 2012.
- No written protests have been received to date.

### **Expanded Options and Alternatives:**

- (1) Table the item if additional information or time is needed.
- (2) Make no recommendation.
- (3) Forward the application to the State with a recommendation for approval.
- (4) Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

**Date of Council Approval:**

---

**Attachments:**    MNA Letter to Applicant  
                         MNA Hearing Procedures  
                         MNA Series Description  
                         MNA Section 13  
                         MNA Police Memo  
                         MNA Code Memo  
                         MNA Tax Memo



# City of Flagstaff

OFFICE OF THE CITY CLERK

July 5, 2012

H.J. Lewkowitz  
2600 N. Central Ave., Suite 1775  
Phoenix, AZ 85004

Dear Mr. Lewkowitz:

Your application for a person transfer and location transfer Series 07 liquor license for the Museum of Northern Arizona at 3101 N. Fort Valley Road was posted on June 22, 2012. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on Tuesday, July 17, 2012 which begins at noon.

It is important that you or your representative attend this Council Meeting to make a presentation on your application and to answer any questions that the City Council may have. Failure to make a presentation could result in a recommendation for denial of your application. We suggest that you contact your legal counsel or the Department of Liquor Licenses and Control at 602-542-5141 to determine the criteria for your license and to make a presentation on that information, as well as stating whether or not you have attended the necessary training, whether or not you have had a business prior to this one, and, if so, the kinds of business(es) you have operated. To help you understand how the public hearing process will be conducted, we are enclosing a copy of the City's liquor license application hearing procedures.

The twenty-day posting period for your liquor license application expired on July 5, 2012, and the application may be removed from the premises.

If you have any questions, please feel free to call me at 928-213-2066.

Sincerely,

Susan Alden  
City Records Technician

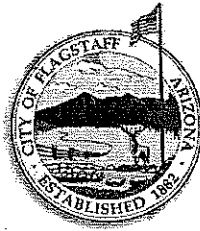
Enclosure

Arizona Relay Service 7-1-1

211 West Aspen Avenue, Flagstaff, Arizona 86001  
Main & TDD (928) 774-5281 • Fax (928) 779-7696







# City of Flagstaff

## Liquor License Application Hearing Procedures

1. When the matter is reached at the Council meeting, the presiding officer will accept a motion to open the public hearing on the item.
2. The presiding officer will request that the Applicant come forward to address the Council regarding the application in a presentation not exceeding ten (10) minutes. Council may question the Applicant regarding the testimony or other evidence provided by the Applicant.
3. The presiding officer will then ask whether City staff have information to present to the Council regarding the application. Staff should come forward at this point and present information to the Council in a presentation not exceeding ten (10) minutes. Council may question City staff regarding the testimony or other evidence provided by City staff.
4. Other parties, if any, may then testify, limited to three (3) minutes per person. Council may question these parties regarding the testimony they present to the Council.
5. The Applicant may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of the Applicant.
6. City staff may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of City Staff.
7. By motion, Council will then close the public hearing.
8. By motion, the Council will then vote to forward the application to the State with a recommendation of approval, disapproval, or shall vote to forward with no recommendation.

## License Types: Series 07 Beer and Wine Bar License

Transferable (From person to person and/or location to location within the same county only)

On & off-sale retail privileges

Note: Terms in **BOLD CAPITALS** are defined in the glossary.

### PURPOSE:

Allows a beer and wine bar retailer to sell and serve beer and wine, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

### ADDITIONAL RIGHTS AND RESPONSIBILITIES:

A retailer with off-sale privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. Payment must be made no later than the time of **DELIVERY**. The retailer must complete a Department approved "Record of Delivery" form for each spirituous liquor retail delivery.

On any original applications, new managers and/or the person responsible for the day-to-day operations must attend a basic and management training class.

A licensee acting as a **RETAIL AGENT**, authorized to purchase and accept delivery of spirituous liquor by other licensees, must receive a certificate of registration from the Department.

A **PREGNANCY WARNING SIGN** for pregnant women consuming spirituous liquor must be posted within twenty (20) feet of the cash register or behind the bar.

A log must be kept by the licensee of all persons employed at the premises including each employee's name, date and place of birth, address and responsibilities.

Off-sale ("To Go") package sales can be made on the bar premises as long as the area of off-sale operation does not utilize a separate entrance and exit from the one provided for the bar.

Bar, beer and wine bar and restaurant licensees must pay an annual surcharge of \$20.00. The money collected from these licensees will be used by the Department for an auditor to review compliance by restaurants with the restaurant licensing provisions of ARS 4-205.02.

**SECTION 12 Location to Location Transfer: (Bars and Liquor Stores ONLY)**

APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE

1. Current Business: Name COST PLUS WORLD MARKET  
(Exactly as it appears on license) Address 5005 EAST MARKET PLACE DRIVE, STE 120, FLAGSTAFF, AZ 86004
2. New Business: Name MUSEUM OF NORTHERN ARIZONA  
(Physical Street Location) Address 3101 NORTH FORT VALLEY ROAD, FLAGSTAFF, AZ 86001
3. License Type: SERIES #7 License Number: 07030055
4. If more than one license to be transferred: License Type: \_\_\_\_\_ License Number: \_\_\_\_\_
5. What date do you plan to move? WHEN LICENSE ISSUED What date do you plan to open? CURRENTLY OPEN

**SECTION 13 Questions for all in-state applicants excluding those applying for government, hotel/motel, and restaurant licenses (series 5, 11, and 12):**

A.R.S. § 4-207 (A) and (B) state that no retailer's license shall be issued for any premises which are at the time the license application is received by the director, within three hundred (300) horizontal feet of a church, within three hundred (300) horizontal feet of a public or private school building with kindergarten programs or grades one (1) through (12) or within three hundred (300) horizontal feet of a fenced recreational area adjacent to such school building. The above paragraph DOES NOT apply to:

- a) Restaurant license (§ 4-205.02) c) Government license (§ 4-205.03)  
b) Hotel/motel license (§ 4-205.01) d) Fenced playing area of a golf course (§ 4-207 (B)(5))

1. Distance to nearest school: 2,640 ft. Name of school MOUNT CALVARY LUTHERAN SCHOOL  
Address 2605 NORTH FORT VALLEY ROAD, FLAGSTAFF, AZ 86001  
City, State, Zip \_\_\_\_\_
2. Distance to nearest church: 2,640 ft. Name of church MOUNT CALVARY LUTHERAN CHURCH  
Address 2605 NORTH FORT VALLEY ROAD, FLAGSTAFF, AZ 86001  
City, State, Zip \_\_\_\_\_
3. I am the: ☐ Lessee ☐ Sublessee ☒ Owner ☐ Purchaser (of premises)
4. If the premises is leased give lessors: Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_
- 4a. Monthly rental/lease rate \$ \_\_\_\_\_ What is the remaining length of the lease \_\_\_ yrs. \_\_\_ mos.
- 4b. What is the penalty if the lease is not fulfilled? \$ \_\_\_\_\_ or other \_\_\_\_\_  
(give details - attach additional sheet if necessary)
5. What is the total **business** indebtedness for this license/location excluding the lease? \$ 0  
Please list lenders you owe money to.

Last	First	Middle	Amount Owed	Mailing Address	City	State	Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for (be specific)? MUSEUM

### SECTION 13 - continued

7. Has a license or a transfer license for the premises on this application been denied by the state within the past one (1) year?  
☐ YES ☒ NO If yes, attach explanation.
8. Does any spirituous liquor manufacturer, wholesaler, or employee have any interest in your business? ☐ YES ☒ NO
9. Is the premises currently licensed with a liquor license? ☐ YES ☒ NO If yes, give license number and licensee's name:  
License # \_\_\_\_\_ (exactly as it appears on license) Name \_\_\_\_\_

### SECTION 14 Restaurant or hotel/motel license applicants:

1. Is there an existing restaurant or hotel/motel liquor license at the proposed location? ☐ YES ☐ NO  
If yes, give the name of licensee, Agent or a company name:  
\_\_\_\_\_  
Last First Middle and license #: \_\_\_\_\_
2. If the answer to Question 1 is YES, you may qualify for an Interim Permit to operate while your application is pending; consult A.R.S. § 4-203.01; and complete SECTION 5 of this application.
3. All restaurant and hotel/motel applicants must complete a Restaurant Operation Plan (Form LIC0114) provided by the Department of Liquor Licenses and Control.
4. As stated in A.R.S. § 4-205.02.G.2, a restaurant is an establishment which derives at least 40 percent of its gross revenue from the sale of food. Gross revenue is the revenue derived from all sales of food and spirituous liquor on the licensed premises. By applying for this ☐ hotel/motel ☐ restaurant license, I certify that I understand that I must maintain a minimum of 40 percent food sales based on these definitions and have included the Restaurant Hotel/Motel Records Required for Audit (form LIC 1013) with this application.

\_\_\_\_\_  
applicant's signature

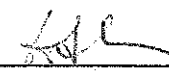
As stated in A.R.S. § 4-205.02 (B), I understand it is my responsibility to contact the Department of Liquor Licenses and Control to schedule an inspection when all tables and chairs are on site, kitchen equipment, and, if applicable, patio barriers are in place on the licensed premises. With the exception of the patio barriers, these items are not required to be properly installed for this inspection. Failure to schedule an inspection will delay issuance of the license. If you are not ready for your inspection 90 days after filing your application, please request an extension in writing, specify why the extension is necessary, and the new inspection date you are requesting. To schedule your site inspection visit [www.azliquor.gov](http://www.azliquor.gov) and click on the "Information" tab.

\_\_\_\_\_  
applicant's initials

### SECTION 15 Diagram of Premises: (Blueprints not accepted, diagram must be on this form)

1. Check ALL boxes that apply to your business:  
☒ Entrances/Exits ☒ Liquor storage areas Patio: ☒ Contiguous  
☐ Service windows ☐ Drive-in windows ☐ Non Contiguous
2. Is your licensed premises currently closed due to construction, renovation, or redesign? ☐ YES ☒ NO  
If yes, what is your estimated opening date? \_\_\_\_\_  
month/day/year
3. Restaurants and hotel/motel applicants are required to draw a detailed floor plan of the kitchen and dining areas including the locations of all kitchen equipment and dining furniture. Diagram paper is provided on page 7.
4. The diagram (a detailed floor plan) you provide is required to disclose only the area(s) where spirituous liquor is to be sold, served, consumed, dispensed, possessed, or stored on the premises unless it is a restaurant (see #3 above).
5. Provide the square footage or outside dimensions of the licensed premises. Please do not include non-licensed premises, such as parking lots, living quarters, etc.

As stated in A.R.S. § 4-207.01(B), I understand it is my responsibility to notify the Department of Liquor Licenses and Control when there are changes to boundaries, entrances, exits, added or deleted doors, windows or service windows, or increase or decrease to the square footage after submitting this initial drawing.

  
applicant's initials

## MEMORANDUM

Memo # 12-101-01

**TO:** Chief Kevin Treadway

**FROM:** Sgt. M. Wright

**DATE:** June 27, 2012

**RE:** Series 7 Liquor License –Person and Location Transfer-Application for Museum of Northern Arizona

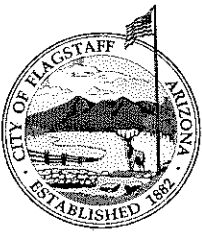
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On June 27, 2012, I initiated an investigation into a series 7 (beer and wine) liquor license person and location transfer application filed by H.J. Lewkowitz (Agent), Robert Breunig (Controlling Person), Lewis McCoy (Controlling Person), John Corbin (Controlling Person) and Shannon Benjamin (Manager). The listed people currently operate and represent the Museum of Northern Arizona.

I spoke with Shannon Benjamin who stated the liquor license was purchased so they can serve beer and wine to visitors of the Museum. Shannon said the license was purchased from the previous owners of Cost Plus World Market. The Museum of Northern Arizona is located at 3101 N. Fort Valley Road in Flagstaff. The Museum of Northern Arizona is located more than 300 feet from the nearest school or church. The series 7 license number being applied for is #07030055.

I conducted a local records query and public access check on Shannon Benjamin, H.J. Lewkowitz, Robert Breunig, Lewis McCoy, and John Corbin. No derogatory records were found. Shannon advised she had completed the liquor class provided by the Department of Liquor Licenses and Control and provided proof. Shannon said she has managed several special event liquor licenses with no problems. Shannon said she has never operated or owned her own liquor license. Shannon said she has never had or been involved with any liquor law violations.


At this time the Flagstaff Police Department makes a recommendation for approval.




## Planning and Development Services Memorandum

June 20, 2012

TO: Susan Alden, City Records Technician

THROUGH: Mark Sawyers, AICP, Current Planning Manager 

FROM: Gregory Brooks, Code Compliance Officer II 

RE: Application for Liquor License #07030055  
3101 N. Ft. Valley Rd., Flagstaff, Arizona 86001  
Assessor's Parcel Number 111-01-001F  
H. Lewkowitz on behalf of the Museum of Northern Arizona

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This application is a request for a Series 07 (Beer and Wine Bar) person transfer and a location transfer liquor license from H. Lewkowitz on behalf of the Museum of Northern Arizona, located in the Public Facilities (PF) Zone. This district allows for Beer and Wine Bars as an ancillary use.

This is a person transfer and a location transfer liquor license.

There are no active code violations associated with H. Lewkowitz or the Museum of Northern Arizona at this time.

This Liquor License is recommended for approval.

# Memo

To: Susan Alden, City Records Technician

From: Ranbir Cheema - Tax, Licensing & Revenue Manager



Date: June 27, 2012

Re: Series 07 Liquor License – Person and Location Transfer – Museum of Northern Arizona

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Museum of Northern Arizona is properly licensed with the City and current with their tax return filing and remittance of sales tax. This business is compliant with the sales tax and licensing requirements of the City.

/liquor licenses/Museum of N AZ.doc

## 4. G.

### **CITY OF FLAGSTAFF STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Susan Alden, City Records Technician  
**Date:** 06/14/2012  
**Meeting Date:** 07/17/2012



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#### **TITLE:**

**Consideration and Action on Liquor License Application:** Angela Thomas, "A'scentual Beauty Boutique", 12 E. Route 66, #102, Series 10, New License.

#### **RECOMMENDED ACTION:**

Open the public hearing.  
Receive citizen input.  
Close the public hearing.

The City Council has the option to:

- (1) Forward the application to the State with a recommendation for approval;
- (2) Forward the application to the State with no recommendation; or
- (3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

#### **Policy Decision or Reason for Action:**

Angela Thomas has started a new business in a new location which requires a Series 10 (Beer and Wine Store) license.

#### **Financial Impact:**

There is no budgetary impact to the City of Flagstaff.

#### **Connection to Council Goal:**

Effective governance - regulatory action.

#### **Has There Been Previous Council Decision on This:**



Not applicable.

### **Options and Alternatives**

- o Table the item if additional information or time is needed.
- o Make no recommendation.
- o Forward the application to the State with a recommendation for approval.
- o Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

### **Background/History:**

- An application for a new Series 10 (Beer and Wine Store) liquor license was received from Angela Thomas for A'scentual Beauty Boutique, 12 E. Route 66, #102. This is a new business in a new location.
- A background investigation performed by Sgt. Matt Wright of the Flagstaff Police Department resulted in a recommendation for approval.
- A background investigation performed by Gregory Brooks, Code Compliance Officer II, resulted in no active code violations being reported.
- Sales tax and licensing information was reviewed by Ranbir Cheema, Tax, Licensing & Revenue Manager, resulting in a recommendation for approval.

### **Key Considerations:**

- Because the application is for a new license, consideration may be given both to the applicant's personal qualifications, and the location.
- A Series 10 (Beer and Wine Store) license allows a retail store to sell beer and wine (no other spirituous liquors), only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises.
- The deadline for issuing a recommendation on this application is August 10, 2012.
- The applicant is not required to provide the distance between the applicant's business and the nearest church or school for government (Series 05), hotel/motel (Series 11), or restaurant, (Series 12) liquor license applications; the State does not require a geological map or list of licenses in the vicinity for any license series.

### **Community Benefits and Considerations:**

- This business will contribute to the tax base of the community.
- We are not aware of any other relevant considerations.

### **Community Involvement:**

- The application was properly posted on June 25, 2012.
- No written protests have been received to date.

### **Expanded Options and Alternatives:**

- (1) Table the item if additional information or time is needed.
- (2) Make no recommendation.
- (3) Forward the application to the State with a recommendation for approval.
- (4) Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

**Date of Council Approval:**

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**Attachments:**    A'scentual Letter to Applicant  
                         Hearing Procedures  
                         Series 10 Description  
                         A'scentual Section 13  
                         A'scentual Police Memo  
                         A'scentual Code Memo  
                         A'scentual Tax Memo



# City of Flagstaff

OFFICE OF THE CITY CLERK

July 2, 2012

Angela Thomas  
5175 Bighorn Drive  
Flagstaff, AZ 86004

Dear Ms. Thomas:

Your application for a new Series 10 liquor license for A'scentual Beauty Boutique at 12 E. Route 66, #102 was posted on June 25, 2012. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on Tuesday, July 17, 2012 which begins at noon.

It is important that you or your representative attend this Council Meeting to make a presentation on your application and to answer any questions that the City Council may have. Failure to make a presentation could result in a recommendation for denial of your application. We suggest that you contact your legal counsel or the Department of Liquor Licenses and Control at 602-542-5141 to determine the criteria for your license and to make a presentation on that information, as well as stating whether or not you have attended the necessary training, whether or not you have had a business prior to this one, and, if so, the kinds of business(es) you have operated. To help you understand how the public hearing process will be conducted, we are enclosing a copy of the City's liquor license application hearing procedures.

The twenty-day posting period for your liquor license application will expire on July 15, 2012, and the application may be removed from the premises after that date.

If you have any questions, please feel free to call me at 928-213-2066.

Sincerely,

Susan Alden  
City Records Technician

Enclosure

Arizona Relay Service 7-1-1  
211 West Aspen Avenue, Flagstaff, Arizona 86001  
Main & TDD (928) 774-5281 • Fax (928) 779-7696





# City of Flagstaff

## Liquor License Application Hearing Procedures

1. When the matter is reached at the Council meeting, the presiding officer will accept a motion to open the public hearing on the item.
2. The presiding officer will request that the Applicant come forward to address the Council regarding the application in a presentation not exceeding ten (10) minutes. Council may question the Applicant regarding the testimony or other evidence provided by the Applicant.
3. The presiding officer will then ask whether City staff have information to present to the Council regarding the application. Staff should come forward at this point and present information to the Council in a presentation not exceeding ten (10) minutes. Council may question City staff regarding the testimony or other evidence provided by City staff.
4. Other parties, if any, may then testify, limited to three (3) minutes per person. Council may question these parties regarding the testimony they present to the Council.
5. The Applicant may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of the Applicant.
6. City staff may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of City Staff.
7. By motion, Council will then close the public hearing.
8. By motion, the Council will then vote to forward the application to the State with a recommendation of approval, disapproval, or shall vote to forward with no recommendation.

## License Types: Series 10 Beer and Wine Store License (Beer and wine only)

Non-transferable

Off-sale retail privileges

Note: Terms in **BOLD CAPITALS** are defined in the glossary.

### PURPOSE:

Allows a retail store to sell beer and wine (no other spirituous liquors), only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises.

### ADDITIONAL RIGHTS AND RESPONSIBILITIES:

A retailer with off-sale privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. Payment must be made no later than the time of

**DELIVERY**. The retailer must complete a Department approved "Record of Delivery" form for each spirituous liquor retail delivery.

On any original applications, new managers and/or the person responsible for the day-to-day operations must attend a basic and management training class.

A licensee acting as a **RETAIL AGENT**, authorized to purchase and accept delivery of spirituous liquor by other licensees, must receive a certificate of registration from the Department.

A **PREGNANCY WARNING SIGN** for pregnant women consuming spirituous liquor must be posted within twenty (20) feet of the cash register or behind the bar.

**SECTION 12 Location to Location Transfer: (Bars and Liquor Stores ONLY)**

APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE

1. Current Business: Name \_\_\_\_\_  
(Exactly as it appears on license) Address \_\_\_\_\_
2. New Business: Name \_\_\_\_\_  
(Physical Street Location) Address \_\_\_\_\_
3. License Type: \_\_\_\_\_ License Number: \_\_\_\_\_
4. If more than one license to be transferred: License Type: \_\_\_\_\_ License Number: \_\_\_\_\_
5. What date do you plan to move? \_\_\_\_\_ What date do you plan to open? \_\_\_\_\_

**SECTION 13 Questions for all in-state applicants excluding those applying for government, hotel/motel, and restaurant licenses (series 5, 11, and 12):**

A.R.S. § 4-207 (A) and (B) state that no retailer's license shall be issued for any premises which are at the time the license application is received by the director, within three hundred (300) horizontal feet of a church, within three hundred (300) horizontal feet of a public or private school building with kindergarten programs or grades one (1) through (12) or within three hundred (300) horizontal feet of a fenced recreational area adjacent to such school building. The above paragraph DOES NOT apply to:

- a) Restaurant license (§ 4-205.02) c) Government license (§ 4-205.03)  
b) Hotel/motel license (§ 4-205.01) d) Fenced playing area of a golf course (§ 4-207 (B)(5))

1. Distance to nearest school: 1500 ft. Name of school San Francisco de Asis Catholic School  
Address 320 N. Humphreys St. Flagstaff, Az. 86001  
City, State, Zip
2. Distance to nearest church: 1500 ft. Name of church Church of the Nativity  
Address 116 W. Cherry Flagstaff, Az. 86001  
City, State, Zip
3. I am the: ☒ Lessee ☐ Sublessee ☐ Owner ☐ Purchaser (of premises)
4. If the premises is leased give lessors: Name Ramsey Properties  
Address 3290 Arroyo Trail Flagstaff, AZ. 86004  
City, State, Zip
- 4a. Monthly rental/lease rate \$ 1986.26 What is the remaining length of the lease 2 yrs. 10 mos.
- 4b. What is the penalty if the lease is not fulfilled? \$ evicted or other \_\_\_\_\_  
(give details - attach additional sheet if necessary)
5. What is the total business indebtedness for this license/location excluding the lease? \$ 0  
Please list lenders you owe money to.

Last	First	Middle	Amount Owed	Mailing Address	City State	Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for (be specific)? Cosmetic Retail & Wine & Beer Store

## SECTION 13 - continued

7. Has a license or a transfer license for the premises on this application been denied by the state within the past one (1) year?  
☐ YES ☒ NO If yes, attach explanation.
8. Does any spirituous liquor manufacturer, wholesaler, or employee have any interest in your business? ☐ YES ☒ NO
9. Is the premises currently licensed with a liquor license? ☐ YES ☒ NO If yes, give license number and licensee's name:  
License # \_\_\_\_\_ (exactly as it appears on license) Name \_\_\_\_\_

## SECTION 14 Restaurant or hotel/motel license applicants:

1. Is there an existing restaurant or hotel/motel liquor license at the proposed location? ☐ YES ☐ NO  
If yes, give the name of licensee, Agent or a company name:

\_\_\_\_\_ and license # \_\_\_\_\_  
Last First Middle

2. If the answer to Question 1 is YES, you may qualify for an Interim Permit to operate while your application is pending; consult A.R.S. § 4-203.01; and complete SECTION 5 of this application.
3. All restaurant and hotel/motel applicants must complete a Restaurant Operation Plan (Form LIC0114) provided by the Department of Liquor Licenses and Control.
4. As stated in A.R.S. § 4-205.02.G.2, a restaurant is an establishment which derives at least 40 percent of its gross revenue from the sale of food. Gross revenue is the revenue derived from all sales of food and spirituous liquor on the licensed premises. By applying for this ☐ hotel/motel ☐ restaurant license, I certify that I understand that I must maintain a minimum of 40 percent food sales based on these definitions and have included the Restaurant Hotel/Motel Records Required for Audit (form LIC 1013) with this application.

\_\_\_\_\_  
applicant's signature

As stated in A.R.S. § 4-205.02 (B), I understand it is my responsibility to contact the Department of Liquor Licenses and Control to schedule an inspection when all tables and chairs are on site, kitchen equipment, and, if applicable, patio barriers are in place on the licensed premises. With the exception of the patio barriers, these items are not required to be properly installed for this inspection. Failure to schedule an inspection will delay issuance of the license. If you are not ready for your inspection 90 days after filing your application, please request an extension in writing, specify why the extension is necessary, and the new inspection date you are requesting. To schedule your site inspection visit [www.azliquor.gov](http://www.azliquor.gov) and click on the "Information" tab.

\_\_\_\_\_  
applicants initials

## SECTION 15 Diagram of Premises: (Blueprints not accepted, diagram must be on this form)

1. Check ALL boxes that apply to your business:

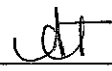
☒ Entrances/Exits ☒ Liquor storage areas Patio: ☐ Contiguous  
☐ Service windows ☐ Drive-in windows ☐ Non Contiguous

2. Is your licensed premises currently closed due to construction, renovation, or redesign? ☐ YES ☒ NO  
If yes, what is your estimated opening date? \_\_\_\_\_

month/day/year

3. Restaurants and hotel/motel applicants are required to draw a detailed floor plan of the kitchen and dining areas including the locations of all kitchen equipment and dining furniture. Diagram paper is provided on page 7.
4. The diagram (a detailed floor plan) you provide is required to disclose only the area(s) where spiritous liquor is to be sold, served, consumed, dispensed, possessed, or stored on the premises unless it is a restaurant (see #3 above).
5. Provide the square footage or outside dimensions of the licensed premises. Please do not include non-licensed premises, such as parking lots, living quarters, etc.

As stated in A.R.S. § 4-207.01(B), I understand it is my responsibility to notify the Department of Liquor Licenses and Control when there are changes to boundaries, entrances, exits, added or deleted doors, windows or service windows, or increase or decrease to the square footage after submitting this initial drawing.

  
applicants initials

## MEMORANDUM

**TO** Chief Treadway

**FROM** Sgt. Matt Wright #704

**DATE** June 28, 2012

**REF** LIQUOR LICENSE APPLICATION – SERIES 10- FOR “A’scentual Beauty Boutique”

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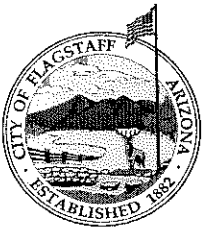
On June 27, 2012, I initiated an investigation into an application for a series 10 liquor license filed by Angela Thomas the listed controlling person and agent for A’scentual Beauty Boutique. A’scentual Beauty Boutique is located at 12 E. Rt. 66 #102 in Flagstaff. Angela is the owner of the business. The liquor license application number is 10033179.

I conducted a local records and a public access check on Angela Thomas. Angela was found to have a DUI arrest she plead guilty to in 2010. Angela has never owned a liquor license and has no pending liquor law violations. Angela’s business is located more than 300 feet away from the nearest school or church.

Angela Thomas has completed the mandatory alcohol training program provided by the Arizona Dept. of Liquor License and Control and provided proof. In speaking with Angela she stated she currently does not have a liquor license. Angela said she plans having a small cooler for her customers to purchase local wines and beer. Angela advised she would not be selling 40 oz. malt liquor.

As a result of this investigation, I can find no reason to oppose this application. Recommendation to Council would be approval.







## Planning and Development Services Memorandum

June 22, 2012

TO: Susan Alden, City Records Technician

THROUGH: Mark Sawyers, AICP, Current Planning Manager 

FROM: Gregory Brooks, Code Compliance Officer II 

RE: Application for Liquor License #10033179  
12 E. Rt. 66, #102, Flagstaff, Arizona 86001  
Assessor's Parcel Number 100-20-006A  
Angela Thomas on behalf of A'scentual Beauty Boutique

---

This application is a request for a Series 10 (Beer and Wine Store) new liquor license from Angela Thomas on behalf of A'scentual Beauty Boutique, located in the Central Business (CB) Zone. This district allows for Beer and Wine Stores.

This is a new liquor license.

There are no active code violations associated with Angela Thomas or A'scentual Beauty Boutique at this time.

This Liquor License is recommended for approval.

# Memo

To: Susan Alden, City Records Technician

From: Ranbir Cheema - Tax, Licensing & Revenue Manager



Date: June 27, 2012

Re: Series 10 Liquor License – New License – A'scentual Beauty Boutique

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A'scentual Beauty Boutique LLC with Ms. Angela Thomas as its Managing Member is properly licensed with the City. They are current in their sales tax reporting and remittance. Currently this business is compliant with the sales tax and licensing requirements of the City.

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## 5. A.

### CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Michael O'Connor, Public Works Section Head  
**Date:** 07/02/2012  
**Meeting Date:** 07/17/2012



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#### TITLE:

**Consideration and Approval of Purchase Under State Contract:** All-wheel-drive motor graders with snow wing attachments.

#### RECOMMENDED ACTION:

Approve the purchase under State Contract of two all-wheel-drive motor graders with snow wing attachments in the amount of \$468,814.92, plus the trade in of two non all-wheel-drive 1986 and 1989 motor graders and a 1984 D7G dozer.

#### Policy Decision or Reason for Action:

The reason for the action is the City's need to replace older equipment with newer more efficient equipment that will allow the Streets Section to maintain its current level of service.

#### Financial Impact:

- The Streets Section has budgeted \$500,000 in Fiscal Year 2013 for the purchase of an All-Wheel Drive Motor Grader with snow wing attachment in account number 040-3203-601-4401.
- The purchase of one (1) All-Wheel Drive Motor Grader is \$308,765.83
- The trade in value for the 1986 motor grader is \$52,165.37 and the 1989 motor grader is \$56,270.25.
- The trade in value for the 1984 D7G dozer is \$40,281.12.
- Total trade in value of all equipment is \$148,716.74.

#### Connection to Council Goal:

Maintain and deliver quality, reliable infrastructure.

**Has There Been Previous Council Decision on This:**

None previously.

**Options and Alternatives**

- Option A: Accept State contract bid from RDO as the lowest, responsive bidder for the amount of \$468,814.92 for the two (2) All- Wheel Drive Motor Graders with snow wing attachments, and the trade in of two (2) non all wheel drive motor graders and one (1) dozer.
- Option B: Accept State contract bid from RDO as the lowest responsive bidder for the amount of \$216,319.34 for one (1) All Wheel Drive Motor Grader with snow wing attachment, and trade in one (1) non all wheel drive motor grader and one (1) dozer.
- Option C: Conduct competitive bid process.
- Option D: Continue to use existing motor graders.

**Background/History:**

Within the Streets fleet, the equipment has become aged and replacements have been deferred for a few years due to the declining Highway User Revenue Funds (HURF). This year it was identified that the HURF fund balance had the capacity to fund some equipment replacement. One of Streets top needs was a All-Wheel Drive Motor Grader with snow wing attachment.

Staff programmed money into the budget using projections from verbal quotes from two distributors. Within the next few years it was projected that equipment needs would grow, and now we had the opportunity to address one need. As the equipment was purchased in groups this was an opportunity to move the needs apart for future replacements. Streets has currently four (4) motor graders that meet the criteria for replacement. With this State contract, it would address two of these needs.

The oldest motor grader is 26 years old (1986), has 7,600 hours on it and life to date costs are \$92,400. The main concern with this motor grader is that it has become under powered and the hydraulics have become very slow, which affects the efficient operation of the machine. A certified refurbish of this machine would be approximately \$200,000, which would include an engine rebuild, injectors, fuel system parts and a turbo for the engine to increase the power. It would include hydraulic cylinders and other major hydraulic parts, and a transmission rebuild. Streets has another motor grader (1989) that will meet its replacement criteria within the next six months, it is 23 years old, and the life to date costs are \$144,000. This motor grader has 8,700 hours on it, so by the next calendar year it will meet the 9,000 hour criteria set by the Fleet Committee. This piece of equipment has had many significant repairs (transmission, drive train and hydraulics) in its lifetime and the operation is similar to the older one, as it is not as efficient in the daily operation. As these pieces of machinery are older it may be difficult to find parts to repair them. The Fleet Committee has reviewed the request to replace the motor graders and they voted unanimously in favor of replacing them. The snow wing attachments will be removed before trade in and used as replacement parts for the existing motor graders the attachments will fit.

Staff also identified an underutilized dozer that would also qualify for trade in to assist with this purchase. The dozer is in need of a significant amount of repairs (track repairs, major hydraulic

repairs, drive train) that would cost approximately \$40,000 and has become too expensive to keep in the Fleet. As times have changed, we could sustain our operations without this piece of equipment as we have one similar dozer within the Streets fleet. The Fleet committee was very receptive to this idea, as it helps accomplish the goal of reducing the City's fleet.

Staff presented to the Budget Committee this proposal and it was voted to progress with the process. The vendor agreed to accept trade in of all three pieces of equipment with a total trade in value of \$148,716.74, and provide two new all-wheel drive motor graders with snow wing attachments for a cost to the City of \$468,814.92. In short, the City reduces its overall fleet by one piece of equipment and receives two new all-wheel drive motor graders.

For future replacements, all-wheel drive motor graders will be preferred, as they are more efficient in dirt grading and snow plowing operations. The front steering wheels when engaged in all-wheel drive mode, help pull the the material, utilizing the horsepower more evenly, therefore reducing the wear and tear on the machine. Due to the terrain and hills in Flagstaff, all-wheel drive motor graders would provide a safer operation and would help maintain the core services that the Street Section provides.

Staff also researched the availability of used equipment for purchase; however, the City prefers all-wheel drive motor graders which are not available on the market to purchase used or to rent.

### **Key Considerations:**

When preparing to purchase the replacement motor grader, staff became aware of a State contract that could be used for this purchase. The Arizona Department of Transportation conducted a formal solicitation for bids to purchase motor graders and the process concluded that RDO equipment company was the most responsive bidder.

The warranty on the equipment is fully extended "bumper to bumper" to any defects in workmanship and materials for seven (7) years. The warranty does not cover items that are considered to be operating and maintenance items ( tires, oil changes, brakes etc)

The City of Flagstaff has had a long working relationship with the RDO Equipment Company (RDO), a local business, for the last twenty (20) plus years and has their equipment currently in the fleet. In this time, Fleet Maintenance staff and equipment operators have gained confidence in RDO's abilities to the provide warranty work, preventive maintenance and product support needed with this purchase.

### **Community Benefits and Considerations:**

Currently the Streets Section has two (2) All-Wheel Drive Motor Graders out of nine motor graders total. The replacement of two old, non-all wheel drive graders with these all-wheel drive motor graders with snow wing attachments will allow for the Street Section to meet the expected level of service to the community, as they are more efficient in their operation.

### **Community Involvement:**

None

**Expanded Options and Alternatives:**

- Option A: Accept State contract bid from RDO as the lowest responsive bidder for the amount of \$468,814.92 for the two (2) All Wheel Drive Motor Graders with snow wing attachments and the trade in of two (2) non all-wheel drive motor graders and one (1) dozer.
- Option B: Accept State contract bid from RDO as the lowest responsible bidder for the amount of \$216,319.34 for one (1) All- Wheel Drive Motor Grader with snow wing attachment and the trade in of one (1) non all-wheel drive motor grader and one (1) dozer.
- Option C: Conduct competitive bid process.
- Option D: Continue to use existing non all-wheel drive motor graders with higher maintenance cost and potential challenges in finding parts

**Date of Council Approval:**

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**Attachments:**    RDO proposal

Investment Proposal for:  
CITY OF FLAGSTAFF  
211 W. ASPEN  
FLAGSTAFF AZ  
FLAGSTAFF, AZ 86001  
Phone: (928) 774-5281



Buzz Ivceek  
5500 East Penstock Avenue  
Flagstaff, AZ 86004  
Phone: (928) 526-0639  
Mobile: (928) 699-0583  
Fax: (928) 526-2498

ADOT STATE CONTRACT/BLANKET # ADOT11-002359.

Equipment: NEW 2012 JOHN DEERE 772GP

List Price \$439,417.04

#### Key Features

8470T	772G MOTOR GRADER	1020	ELECTRO HYDRAULIC CONTROLS
1130	9.0L ENG,EPA TIER IV	1220	ALTERNATOR 130 AMP
1310	QUICK SERVICE GROUP	1410	STANDARD FUEL LINES
1520	NO FAST FILL FUEL SYSTEM	1610	HYDRAULIC PUMP DISCONNECT
1700	JDLINK ULTIMATE(W/SIM1) N.A.	1830	BLACK EXHAUST STACK IT4 ENG
1910	BLADE IMPACT ABSORPTION SYST	2080	14'X27"X1" MB (8" CEX3/4")
2230	CRCLE INST-NYLN/BRNZ SD W/CL	2310	REV OVERLAY END BITS
2410	NO MOLDBOARD EXTENSIONS	2605	ENGLISH OPERATOR MANUAL
4317	14X24 12PR FSTN W/ 3PC RIM	5060	EH LOW CAB W/ WINDOWS
5510	AUTOSHIFT TRANSMISSION	5710	TRANS VALVE SOLENOID GUARD
5810	GREASE,OIL,FUEL&COOLNT 10W30	6030	NO CAB PRECLEANER
6140	PREM POST/CONT FAB EH CNTRLS	6590	EH FRT W 1AUX/MID W 3AUX
6650	EH PLACE HOLDER	6710	FRONT PUSH BLOCK
6810	REAR RIPPER/SCARIFIER COMBO	7160	DLX LIGHTING PKG W/LED +8XTR
7520	1400 CCA BATTERY, 9.0L	7820	NO FRONT FENDERS
8120	CONVERTER, 25 AMP 24V TO 12V	8210	MIRROR, CONVEX EXTERIOR
8310	LOWER FRONT INT WIPER/WASHER	8410	RADIO AM/FM/WB WITH CD
8510	A/C - CHARGE	8730	NO SOUND ABSORPTION PKG(IT4)
8810	REAR CAMERA	9070	CIRCLE DRIVE SLIP CLUTCH
9120	SUNVISOR-FRONT WINDOW	9130	REAR RETRACTABLE SUNSHADE
9210	PEDAL DECELERATOR	9220	FIRE EXTINGUISHER
9280	SMV SIGN WITH BRACKET	9290	RH FLIP DOWN BEACON BRACKET
9360	HEATER ENG COOLANT, 120V	9370	ETHER START AID
9430	9 EXTRA SCFR SHANKS W/TEETH	9440	2 EXTRA RIPPER SHNKS W/TEETH

#### Serial Number

TBD (0 Approximated Hours)

Equipment Price \$259,690.00

#### Warranty Information

John Deere / Full Extended / 84 Months / 6000 Hours / \$200.00 Deductible

\$0.00

#### Additional Items

Other	HENKE 12' SNOW-WING	\$0.00
Other	GRADE PRO EH CONTROLS	\$23,165.00
Other	130 AMP ALTERNATOR/QUICK SERVICE GROUP	\$401.76
Other	14'X27"X1" MOLDBOARD	\$297.38
Other	OPENING WINDOWS AND LOWER FRONT WIPERS	\$825.43
Other	DELUXE LIGHTS	\$274.97
Other	25 AMP CONVERTER	\$203.18
Other	RADIO AM/FM/WB/CD	\$424.68
Other	REAR CAMERA	\$1,305.11
Other	FRT AND REAR WINDOW SCREENS	\$162.95
Other	FIRE EXTINGUISHER	\$56.52
Other	FRONT PUSH BLOCK	\$1,727.75
Other	2 SPARE RIMS AND TIRES	\$0.00

Estimated Conversion Price:

**\$288,534.73**

**Key Features**

8470T	772G MOTOR GRADER	1020	ELECTRO HYDRAULIC CONTROLS
1130	9.0L ENG,EPA TIER IV	1220	ALTERNATOR 130 AMP
1310	QUICK SERVICE GROUP	1410	STANDARD FUEL LINES
1520	NO FAST FILL FUEL SYSTEM	1610	HYDRAULIC PUMP DISCONNECT
1700	JDLINK ULTIMATE(W/SIM1) N.A.	1830	BLACK EXHAUST STACK IT4 ENG
1910	BLADE IMPACT ABSORPTION SYST	2080	14'X27"X1" MB (8" CEX3/4")
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TBD (0 Approximated Hours)

Equipment Price \$259,690.00

**Warranty Information**

John Deere / Full Extended / 84 Months / 6000 Hours / \$200.00 Deductible

\$0.00

**Additional Items**

Other	12' HENKE SNOW-WING	\$0.00
Other	GRADE PRO EH CONTROLS	\$23,165.00
Other	130 AMP ALTERNATOR/QUICK SERVICE GROUP	\$401.76
Other	14'X27"X1" MOLDBOARD	\$297.38
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Other	REAR CAMERA	\$1,305.11
Other	FRONT AND REAR WINDOW SCREENS	\$162.95
Other	FIRE EXTINGUISHER	\$56.52
Other	FRONT PUSH BLOCK	\$1,727.75
Other	2 SPARE RIMS AND TIRES	\$0.00

**Estimated Conversion Price:****\$288,534.73****TRADE INFORMATION**

1989 CAT 140G - 72V11972	Hrs 8842	Allowance \$56,270.25
1987 CAT 140G - 72V09912	Hrs 7504	Allowance \$52,165.37
1984 CAT D7G - 92V12097	Hrs 1230	Allowance \$40,281.12

**Credit for all Trades:****(\$148,716.74)**



## PROPOSAL SUMMARY

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Equipment Total	\$577,069.46
Total Trade-In Allowance	(\$148,716.74)
Sub Total	\$428,352.72
Estimated sales tax to apply (AZFL AZ FLAGSTAFF 9.446%)	\$40,462.20

### **Total Investment**

**\$468,814.92**

### **Buzz Ivcek**

RDO EQUIPMENT CO.  
bivcek@rdoequipment.com

## 5. B.

### CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Randall Groth, Project Manager  
**Date:** 06/05/2012  
**Meeting Date:** 07/17/2012



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#### TITLE:

**Consideration and Approval of Construction Contract:** Woodlands Village Blvd. Median and Edge Improvements Project.

#### RECOMMENDED ACTION:

1. Approve the construction contract with R.K. Sanders Inc. in the amount of \$384,297.90 which includes a \$42,570 (11%) contract allowance for accommodation of unanticipated field issues and a contract time schedule of 100 calendar days; and
2. Approve administrative Change Order Authority to the City Manager in the amount of \$34,172 (10% of bid contract amount, less allowance) to cover potential costs associated with unanticipated items of work; and
3. Authorize the City Manager to execute the necessary documents.

#### Policy Decision or Reason for Action:

In accordance with Regional Plan Objectives, award of the contract will authorize the construction of the Woodlands Village Blvd. Median and Edge Improvements Project in accordance with the approved Public Improvements Plans prepared by the WLB Group, Inc.

Subsidiary Decisions Points: None

#### Financial Impact:

The project is funded by the Beautification component of Bed, Board and Beverage revenues in the amount of \$699,277 for FY13 (acct. 051-7445-631) which includes ADOT (Arizona Department of Transportation) Transportation Enhancement (TE) grant funding up to \$479,000. Sidewalk and edge improvements are funded by Transportation Tax revenues in the amount of \$88,000 for FY13 (acct. 040-9210-607).

#### Connection to Council Goal:

Maintain and deliver quality, reliable infrastructure.

**Has There Been Previous Council Decision on This:**

In March 2011, the Council approved an Intergovernmental Agreement between the City and ADOT, agreeing to accept the grant funds and authorizing a minimum of 5.7% in matching funds.

Council endorsed the use of potable drip irrigation for the medians in September 2011.

**Options and Alternatives**

Approve the award as recommended. This would allow the project to be initiated this season.

Reject bids and provide additional direction to staff. This option would likely delay the project delivery until 2013. Discussions with ADOT on bidding and delivery issues would be warranted.

**Background/History:**

In accordance with the Regional Plan objectives, this project will provide low water use landscape elements in the medians of Woodlands Village Blvd. and Beulah Blvd. The bid solicitation was published on the City website and twice in the *Daily Sun* on May 20 and June 10, 2012. Four bids were received on June 19, 2012 at the office of the City Purchasing Agent. A summary of bids received is below:

<i>Engineer's Estimate</i>	<i>610,000.00</i>
R.K. Sanders, Inc.	384,297.90
Woodruff Construction	455,000.00
Eagle Mountain Construction	473,751.20
BEC Southwest	740,725.74

**Key Considerations:**

The work will provide 2,250 linear feet of sidewalk on the southwest/west side of Woodlands Village Blvd. (WVB) from Beulah Blvd. to Forest Meadows Street. Irrigation and median landscaping will be installed in the WVB medians from Beulah Blvd. to W. Rte. 66 and in the median of Beulah Blvd. from WVB to Lake Mary Rd. The landscape design adheres to xeriscape standards. Seasonal potable drip irrigation will be provided.

**Community Benefits and Considerations:**

In accordance with the Regional Plan objectives, the project will provide low water use landscape elements in the medians of Woodlands Village Blvd. and Beulah Blvd.

The construction will also complete the missing section of sidewalk on the southwest/west side of WVB and reconstruction of driveway entrances will allow for ADA (Americans with Disabilities Act) compliant accessibility along the route. Changes to the existing FUTS (Flagstaff Urban Trails System) crossing will provide a small median refuge area for users as they cross WVB adjacent to Sinclair Wash (in proximity to retailer Big 5 Sporting Goods) near Beulah Blvd.

The approved IGA established the prorata percentages between grant funding (94.3%) and city monies (5.7%). With this project, the City's \$21,905 construction expenditure will be effectively leveraged to construct \$384,298 in improvements. Any budget cost savings will be reprogrammed into the funding division's budget; unused grant funds are returned and may not be used for other City projects.

**Community Involvement:**

Capital staff will notify the impacted businesses in anticipation of the construction and advise where warranted the City has acquired Temporary Construction Easements from adjacent businesses. Limited traffic disruptions are anticipated.

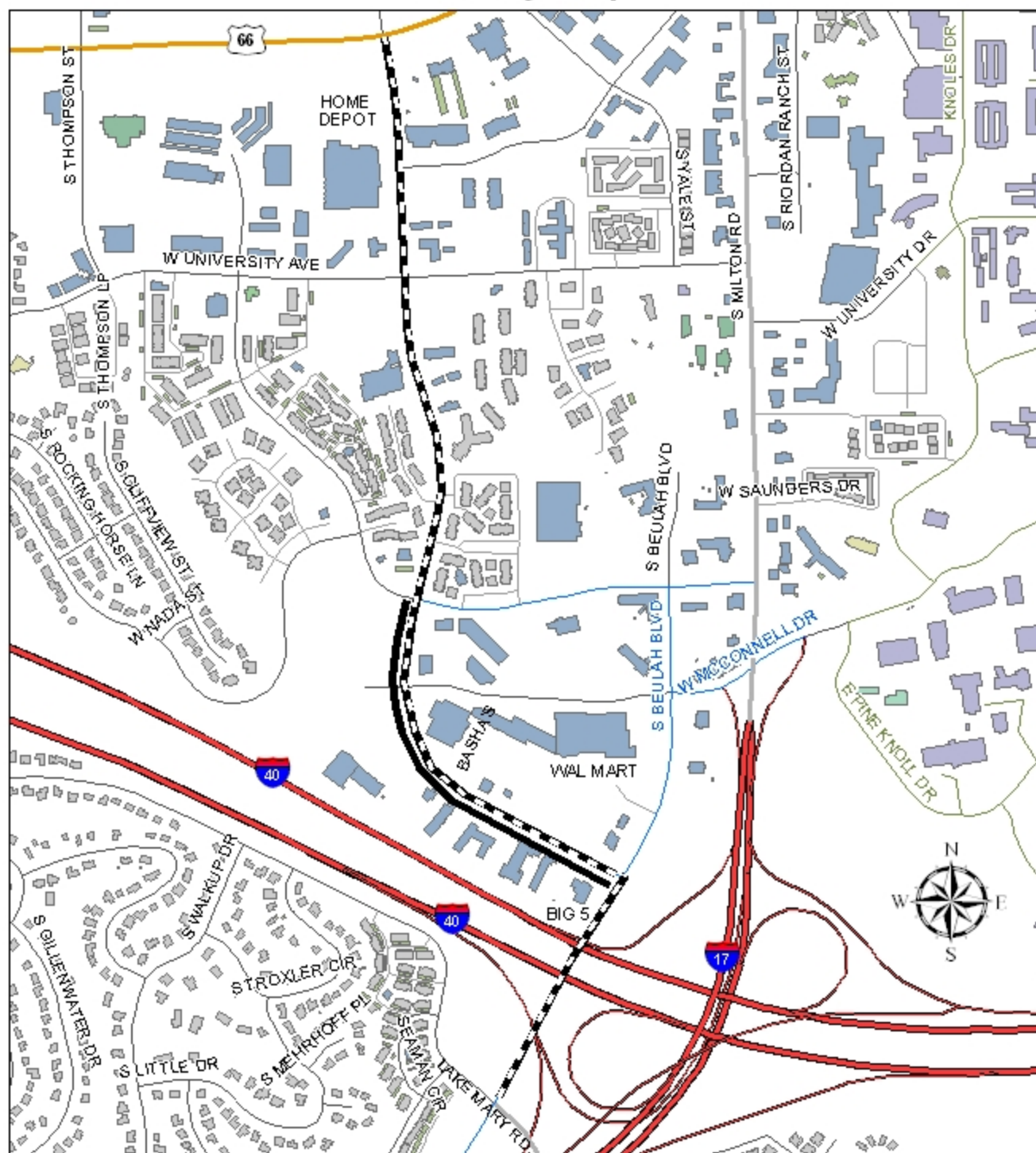
### Expanded Options and Alternatives:

1. Approve the award as recommended.
2. Reject the bids and direct staff to readvertise the project. This option would likely delay construction until 2013. Discussions with ADOT on bidding and delivery issues would be necessary to preserve the authorized grant funding.

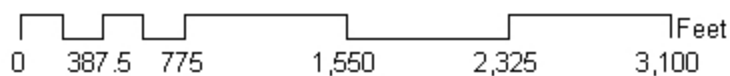
**Date of Council Approval:**

**Attachments:** Revised Vicinity Map  
Construction Agreement

### Vicinity Map



## Woodlands Village Blvd. Median & Edge Improvements



## CONSTRUCTION CONTRACT

**City of Flagstaff, Arizona**

**And**

**R.K. Sanders, Inc.**

This Construction Contract ("Contract") is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2012, by and between the City of Flagstaff, an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona ("Owner") and R. K. Sanders, Inc., and Arizona corporation ("Contractor") with offices at 3028 W. Lincoln Street, Phoenix, Arizona. Contractor and the Owner may be referred to each individually as a "Party" and collectively as the "Parties."

### RECITALS

- A. Owner desires to obtain construction services; and
- B. Contractor has available and offers to provide personnel and materials necessary to accomplish the work and complete the Project as described in the Scope of Work within the required time in accordance with the calendar days included in this Contract.

NOW, THEREFORE, the Owner and Contractor agree as follows:

- 1. Scope of Work.** The Contractor shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all work for the construction of Woodlands Village & Beulah Boulevard Median Edge Improvements (the "Project"). Contractor shall construct the Project for the Owner in a good, workmanlike and substantial manner and to the satisfaction of the Owner through its engineers and under the direction and supervision of the City Engineer, or his properly authorized agents including but not limited to project managers and project engineers. Contractor's work shall be strictly pursuant to and in conformity with the Contract.
  - 1.1 A Pre-Construction Conference will be held with the successful Contractor after the Notice of Award is issued. The date and time of the Conference will be agreed upon between the Contractor and the Engineer. The meeting will be held at City Hall, 211 West Aspen Avenue, Flagstaff, AZ 86001. The purpose of the meeting is to outline specific construction items and procedures that the City of Flagstaff (the "Owner") feels require special attention on the part of the Contractor. The Contractor may also present any variations in procedures to improve the workability of the Project, reduce the cost, or reduce inconvenience to the public. The Contractor shall submit a written proposal at this conference outlining intended plans for pavement replacement, maintaining continuous access to residences and businesses along the construction site, and traffic control.
- 2. Contract; Ownership of Work.** Contractor shall furnish and deliver all of the materials and perform all of the work in accordance with this Contract; Construction Plans; Special Provisions; the City of Flagstaff Engineering Design and Construction Standards and

Specifications; the latest version of the Maricopa Association of Governments (“MAG”) Specifications for Public Works Construction and City revisions to the MAG Specifications for Public Works Construction (“Exhibit A”); and any Arizona Department of Transportation (A.D.O.T.) Standards that may be referenced on the Plans or in the specifications, incorporated in this Contract by reference, plans and associated documents. All provisions of the Invitation for Construction Bids, Performance Bond, Payment Bond, Certificates of Insurance, Addenda, Change Orders and Field Orders, if any, are hereby incorporated into this Contract. All materials, work, specifications and plans shall be the property of the Owner.

The following exhibits are incorporated by reference and are expressly made a part of this Contract:

- |  |           |
|--|-----------|
| 2.1.1 Revisions of MAG Standard Specifications for Public Works Construction | Exhibit A |
| (“Flagstaff Addendum to MAG”)  |           |
| 2.1.2 Special Provisions   | Exhibit B |
| 2.1.3 Grant Provisions   | Exhibit C |

**3. Payments.** In consideration of the faithful performance of the work described in this Contract, the Owner shall pay an amount not to exceed **\$384,297.90** to the Contractor for work and materials provided in accordance with the bid schedule, which amount includes all federal, state, and local taxes, as applicable. This amount shall be payable through monthly progress payments, subject to the following conditions:

- 3.1 Contractor shall promptly submit to the Owner all proper invoices necessary for the determination of the prices of labor and materials;
- 3.2 Progress payments shall be made in the amount of ninety percent (90%) of the value of labor and materials incorporated in the work, based on the sum of the Contract prices of labor and material, and of materials stored at the worksite, on the basis of substantiating paid invoices, as estimated by the Owner, less the aggregate of all previous payments, until the work performed under this Contract is fifty percent (50%) complete. When and after such work is fifty (50%) complete, the ten percent (10%) of value previously retained may be reduced to five percent (5%) of value completed if Contractor is making satisfactory progress as determined by the Owner, and providing that there is no specific cause or claim requiring a greater amount to be retained. If at any time the Owner determines that satisfactory progress is not being made, the ten percent (10%) retention shall be reinstated for all subsequent progress payments made under this Contract;
- 3.3 The City Engineer shall have the right to finally determine the amount due to Contractor;
- 3.4 Monthly progress payments shall be made by the Owner, on or before fourteen (14) calendar days after the receipt by the Owner of an approved estimate of the work completed;

- 3.5 Contractor agrees that title to materials incorporated in the work, and stored at the site, shall vest with the Owner upon receipt of the corresponding progress payment;
- 3.6 The remainder of the Contract price, after deducting all such monthly payments and any retention, shall be paid within sixty (60) days after final acceptance of completed work by the Owner. The release of retention or alternate surety shall be made following the Owner's receipt and acceptance of: Contractor's Affidavit Regarding Settlement of Claims, Affidavit of Payment, Consent of Surety for Final Payment, and Unconditional Full and Final lien waivers from all subcontractors and suppliers who have filed an Arizona Preliminary 20 Day Lien Notice in accordance with A.R.S. §§ 33-992.01 and 33-992.02.

**4. Time of Completion.** Contractor agrees to complete all work as described in this Contract within **100 calendar days** from the date of the Owner's Notice to Proceed free of all liens, claims and demands of any kind for materials, equipment, supplies, services, labor, taxes and damages to property or persons, in the manner and under the conditions specified within the time or times specified in this Contract.

**5. Performance of Work.** All work covered by this Contract shall be done in accordance with the latest and best accepted practices of the trades involved. The Contractor shall use only skilled craftsmen experienced in their respective trades to prepare the materials and to perform the work.

**6. Acceptance of Work; Non Waiver.** No failure of the Owner during the progress of the work to discover or reject materials or work not in accordance with this Contract shall be deemed an acceptance of, or a waiver of, defects in work or materials. No payment shall be construed to be an acceptance of work or materials which are not strictly in accordance with the Contract.

**7. Delay of Work.** Any delay in the performance of this Contract due to strikes, lockouts, fires, or other unavoidable casualties beyond the control of the Contractor and not caused by any wrongful act or negligence of the Contractor shall entitle the Contractor to an extension of time equal to the delay so caused. The Contractor shall notify the Owner in writing specifying such cause within twenty-four (24) hours after its occurrence. In the event such delay is caused by strikes, lockouts, or inability to obtain workmen for any other cause, the Owner shall have the right but shall not be obligated to complete the work on the same basis as is provided for in Section 13 below (Contract Violations).

**8. Failure to Complete Project in Timely Manner.** If Contractor fails or refuses to execute this Contract within the time specified in Section 3 above, or such additional time as may be allowed, the proceeds of Contractor's proposal guaranty shall become subject to deposit into the Treasury of the municipality as monies available to compensate the Owner for damages as provided by A.R.S. § 34-201 for the delay in execution of this Contract, and bonds and the performance of work under this Contract, and the necessity of accepting a higher or less desirable bid from such failure or refusal to execute this Contract and bond as required. If Contractor has submitted a certified check or cashier's check as a proposal guaranty, the check shall be returned after execution of this Contract. The certified check or cashier's check of other Bidders shall be returned at the



expiration of thirty (30) days from the date of opening of proposals or sooner, if this Contract is executed prior to that time.

**9. Labor Demonstration.** It is understood that the work covered by this Contract is for the Owner's business purposes and that any unfavorable publicity or demonstrations in connection with the work will have a negative effect upon the Owner. If Contractor's actions in performance of the Contract result in any public demonstration on behalf of the laborers or organized labor in the vicinity of the Owner's premises, whether such demonstration is in the form of picketing, posting of placards or signs, violence, threats of violence or in any other form, which in the Owner's judgment, might convey to the public the impression that the Owner or the Contractor or any subcontractor is unfair to laborers or to organized labor, the Owner shall have the right to terminate this Contract immediately, unless the Contractor shall have caused such demonstration to be discontinued within two (2) days after request of the Owner to do so. In the event any such demonstration is attended by violence, the Owner may fix lesser time within which a discontinuance shall be accomplished. In the event of Contract termination, the Contractor agrees to remove from the Premises within twenty-four (24) hours of termination, all machinery, tools, and equipment belonging to it or to its subcontractors. All obligations or liabilities of the Owner to the Contractor shall be discharged by such termination, except the obligation to pay to the Contractor a portion of the Contract price representing the value based upon the Contract prices of labor and materials incorporated in the work as established by the Owner, less the aggregate of all previous payments, but subject to all of the conditions pertaining to payments generally.

**10. Material Storage.** During the progress of the work, the Contractor shall arrange for office facilities and for the orderly storage of materials and equipment. Contractor shall erect any temporary structures required for the work at his or her own expense. The Contractor shall at all times keep the premises reasonably free from debris and in a condition which will not increase fire hazards. Upon completion of the work, the Contractor shall remove all temporary buildings and facilities and all equipment, surplus materials and supplies belonging to the Contractor. Contractor shall leave the Premises in good order, clean, and ready to use by the Owner. The establishment of any temporary construction yard, material storage area or staging area to be located within City of Flagstaff limits and outside the public right-of-way or Project limits generally requires a Temporary Use Permit. (See Exhibit A, Section 107.2.1.)

**11. Assignment.** Contractor shall not assign this Contract, in whole or in part, without the prior written consent of the Owner.

**12. Notices.** All notices or demands required to be given, pursuant to the terms of this Contract, shall be given to the other Party in writing, delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

**If to Owner:**

**If to Contractor:**

Patrick Brown, C.P.M.  
Senior Procurement Specialist  
211 West Aspen Avenue  
Flagstaff, AZ 86001

Robert K. Sanders Sr.  
President  
3028 W. Lincoln Street  
Phoenix, AZ 85009

**13. Contract Violations.** In the event of any of the provisions of this Contract are violated by the Contractor or by any of Contractor's subcontractors, the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate such Contract (the "Notice to Terminate"). The Contract shall terminate within five (5) days of the date Contractor receives the Notice to Terminate, unless the violation ceases and Contractor makes arrangements for correction satisfactory to the Owner. In the event of any such termination, the Owner shall immediately serve notice of the termination upon the Surety by registered mail, return receipt requested. The Surety shall have the right to take over and perform the Contract. If the Surety does not commence performance within ten (10) days from the date of receipt of the Owner's notice of termination, the Owner may complete the work at the expense of the Contractor, and the Contractor and his or her Surety shall be liable to the Owner for any excess cost incurred by the Owner to complete the work. If the Owner completes the work, the Owner may take possession of and utilize such materials, appliances and plants as may be on the worksite site and necessary for completion of the work.

**14. Contractor's Liability and Indemnification.** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the Owner, its agents, representatives, officers, directors, officials and employees shall arise in connection with the claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable. The amount and type of insurance coverage requirements set forth in the Contract (Section 103.6 of Exhibit A) will in no way be construed as limiting the scope of the indemnity in this paragraph.

**15. Non Appropriation.** In the event that no funds or insufficient funds are appropriated and budgeted in any fiscal period of the Owner to meet the Owner's obligations under this Contract, the Owner will notify Contractor in writing of such occurrence, and this Contract will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Contract are exhausted. No payments shall be made or due to the other party under this Contract beyond these amounts appropriated and budgeted by the Owner to fund the Owner's obligations under this Contract.

**16. Amendment of Contract.** This Agreement may not be modified or altered except in writing and signed by duly authorized representatives of the parties.

**17. Subcontracts.** Contractor shall not enter into any subcontract, or issue any purchase order for the completed work, or any substantial part of the work, unless in each instance, prior written approval shall have been given by the Owner. Contractor shall be fully responsible to the Owner for acts and omissions of Contractor's subcontractors and all persons either directly or indirectly employed by them.

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**19. Compliance with All Laws.** Contractor shall comply with all applicable laws, statutes, ordinances, regulations and governmental requirements in the performance of this Contract.

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**22. Business Operations in Sudan/Iran.** In accordance with A.R.S. § 35-397, the Contractor certifies that the Contractor and its affiliates and subsidiaries do not have scrutinized business operations in Sudan or Iran. If the City determines that the Provider's certification is false, the City may impose all legal and equitable remedies available to it, including but not limited to termination of this Agreement.

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**25. Attorney's Fees.** If suit or action is initiated in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in event of appeal as allowed by the appellate court.

**26. Time is of the Essence.** Contractor acknowledges that the completion of the Contract by the dates specified final completion is critical to the Owner, time being of the essence of this Contract.

**27. Headings.** The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Contract.

**28. Severability.** If any part of this Contract is determined by a court to be in conflict with any statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Contract shall remain in full force and effect unless the stricken provision leaves the remaining Contract unenforceable.

**IN WITNESS WHEREOF**, the Owner and Contractor, by their duly authorized representatives, have executed this Contract as of the date written above.

*(Please sign in blue ink. Submit original signatures – photocopies not accepted)*

**City of Flagstaff**

**R.K. Sanders, Inc.**

\_\_\_\_\_  
Kevin Burke, City Manager

\_\_\_\_\_  
Signature

Attest:

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

## 5. C.

### CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Tiffin Miller, Project Manager Zone II  
**Date:** 06/01/2012  
**Meeting Date:** 07/17/2012



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#### TITLE:

**Consideration and Approval of Construction Contract:** Coconino/Elden/Humphreys 2010 bond improvements projects.

#### RECOMMENDED ACTION:

1. Approve the construction contract (including the Base Bid and the Additive Alternate) with Eagle Mountain Construction in the amount of \$1,285,353.00 which includes a \$70,000.00 contract allowance and a 120 calendar day contract time;
2. Approve administrative change order authority in the amount of \$61,000 (5% of the contract amount, less allowance) to cover potential costs associated with unanticipated items of work; and
3. Authorize the City Manager to execute the necessary documents.

#### Policy Decision or Reason for Action:

In fulfillment of voter-approved bond authority, award of the contract will authorize the construction of the Coconino/Elden/Humphreys 2010 Bond Improvements Projects in accordance with the approved Public Improvements Plans prepared by Shephard-Wesnitzer, Inc.

#### Financial Impact:

The project is funded by general obligation bond revenues budgeted in FY 2013 in the amount of \$1,549,900 for the Coconino/Elden/Humphreys Bond projects (acct. 403-2436-691).

#### Connection to Council Goal:

Maintain and deliver quality, reliable infrastructure.

#### Has There Been Previous Council Decision on This:

Yes - Council approval of the Special Debt Authorization Election held in November 2010.

### Options and Alternatives

- Approve the award as recommended including the Base Bid (Coconino Avenue eastside, Elden Street and Humphreys Street) and the Additive Alternate (Coconino Avenue westside)
- Approve the award including the Base Bid (Coconino Avenue eastside, Elden Street and Humphreys Street) only
- Reject bids and readvertise the project

### Background/History:

The Coconino/Elden/Humphreys roadway project will replace deteriorated street and utility infrastructure in accordance with the voter-approved bond authorization of November 2010. The bid solicitation was published twice on June 17 & 24, 2012. Four bids were received on June 28, 2012 at the office of the City Purchasing Agent. A summary of bids received is below:

Bidder	Base Bid	Alternate Bid	Total Bid
Consultant's Estimate	\$1,182,313.00	\$286,385.00	\$1,468,698.00
Eagle Mountain Construction	\$1,025,343.00	\$260,010.00	\$1,285,353.00
LP's Excavation	\$1,194,771.50	\$272,087.50	\$1,466,859.00
Woodruff Construction	\$1,218,081.00	\$326,163.00	\$1,544,244.00
C&E Paving & Grading	\$1,273,261.00	\$315,580.00	\$1,588,841.00

### Key Considerations:

The scope of the projects include the following:

- \* Coconino Avenue between Park and Walnut streets (eastside): New 8" sanitary sewer main and services, new 8" water main and services, new curb & gutter and sidewalk, remove and replace asphalt pavement.
- \* Coconino Avenue between Wilson Lane and the west end (westside): New 8" sanitary sewer main and services, 8" water main and services, remove and replace curb & gutter, and mill and overlay asphalt pavement.
- \* Elden Street between Route 66 and Cherry Avenue: New 8" water main and services, new sewer services, new curb & gutter and sidewalk (except the eastside between Birch and Cherry), mill and overlay asphalt pavement.
- \* Humphreys Street from Butler to Cottage avenues: New 12" water main and services, new sewer services, new curb & gutter, new driveways, mill and overlay asphalt pavement.

Construction impacts include traffic detours and temporary displacement of parking.

### **Community Benefits and Considerations:**

The Coconino/Elden/Humphreys project will replace deteriorated street and utility infrastructure in accordance with the voter approved bond authorization of November 2010. Pedestrian and ADA (Americans with Disability Act) accessibility will be improved by the replacement of non-compliant street features.

Elden Street is currently a two-lane, one-way northbound road between Route 66 and Birch Avenue with parallel parking along the eastern curb. This project will re-stripe Elden Street to a one lane, one-way northbound road with parallel parking along both sides. This will result in parking spaces increase from 13 to 22 for a total of 9 additional parking spaces.

### **Community Involvement:**

The Public Participation Goals of INFORM and CONSULT were used as all property owners on Coconino Avenue, Elden and Humphreys streets were sent letters which gave a brief description of the project and encouraged questions and comments from the owners. A few property owners responded to the letters with questions concerning impacts to individual properties and engineering staff met with them to respond to their concerns.

Construction progress updates will be provided to residents and property owners during the project.

### **Expanded Options and Alternatives:**

1. Approve the award as recommended
2. Approve the award including the base bid only which includes Coconino Avenue (eastside), Elden Street and Humphreys Street.
3. Reject bids and readvertise the project which would delay the award and construction of the project to next season.

### **Date of Council Approval:**

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**Attachments:**    Vicinity Map  
                          Construction Agreement

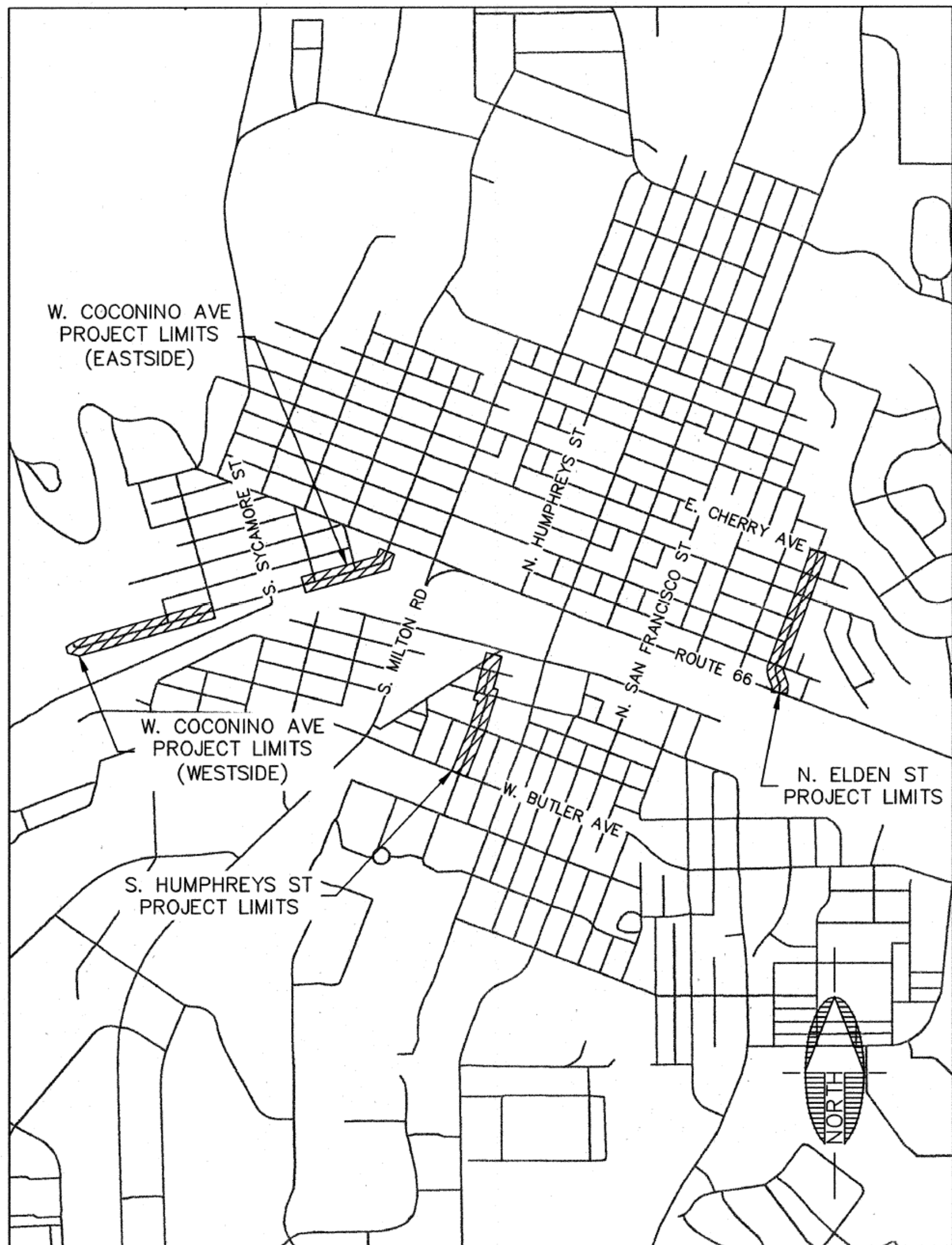
W. COCONINO AVE  
PROJECT LIMITS  
(EASTSIDE)

W. COCONINO AVE  
PROJECT LIMITS  
(WESTSIDE)

S. HUMPHREYS ST  
PROJECT LIMITS

N. ELDEN ST  
PROJECT LIMITS

# VICINITY MAP





## CONSTRUCTION CONTRACT

**City of Flagstaff, Arizona  
And  
Eagle Mountain Construction Company**

This Construction Contract ("Contract") is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2012, by and between the City of Flagstaff, an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona ("Owner") and Eagle Mountain Construction Company, an Arizona company ("Contractor") with offices at 3885 East Industrial Drive, Flagstaff, Arizona. Contractor and the Owner may be referred to each individually as a "Party" and collectively as the "Parties."

### RECITALS

- A. Owner desires to obtain construction services; and
- B. Contractor has available and offers to provide personnel and materials necessary to accomplish the work and complete the Project as described in the Scope of Work within the required time in accordance with the calendar days included in this Contract.

NOW, THEREFORE, the Owner and Contractor agree as follows:

**1. Scope of Work.** The Contractor shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all work for the construction of **Coconino/Elden/Humphreys 2010 Bond Project** (the "Project"). Contractor shall construct the Project for the Owner in a good, workmanlike and substantial manner and to the satisfaction of the Owner through its engineers and under the direction and supervision of the City Engineer, or his properly authorized agents including but not limited to project managers and project engineers. Contractor's work shall be strictly pursuant to and in conformity with the Contract.

- 1.1 A Pre-Construction Conference will be held with the successful Contractor after the Notice of Award is issued. The date and time of the Conference will be agreed upon between the Contractor and the Engineer. The meeting will be held at City Hall, 211 West Aspen Avenue, Flagstaff, AZ 86001. The purpose of the meeting is to outline specific construction items and procedures that the City of Flagstaff (the "Owner") feels require special attention on the part of the Contractor. The Contractor may also present any variations in procedures to improve the workability of the Project, reduce the cost, or reduce inconvenience to the public. The Contractor shall submit a written proposal at this conference outlining intended plans for pavement replacement, maintaining continuous access to residences and businesses along the construction site, and traffic control.

**2. Contract; Ownership of Work.** Contractor shall furnish and deliver all of the materials and perform all of the work in accordance with this Contract; Construction Plans; Special Provisions; the City of Flagstaff Engineering Design and Construction Standards and Specifications; the latest version of the Maricopa Association of Governments ("MAG")

Specifications for Public Works Construction and City revisions to the MAG Specifications for Public Works Construction (“Exhibit A”); and any Arizona Department of Transportation (A.D.O.T.) Standards that may be referenced on the Plans or in the specifications, incorporated in this Contract by reference, plans and associated documents. All provisions of the Invitation for Construction Bids, Performance Bond, Payment Bond, Certificates of Insurance, Addenda, Change Orders and Field Orders, if any, are hereby incorporated into this Contract. All materials, work, specifications and plans shall be the property of the Owner.

The following exhibits are incorporated by reference and are expressly made a part of this Contract:

2.1.1 Revisions of MAG Standard Specifications for Public Works Construction Exhibit A  
 (“Flagstaff Addendum to MAG”)

2.1.2 Special Provisions Exhibit B

**3. Payments.** In consideration of the faithful performance of the work described in this Contract, the Owner shall pay an amount not to exceed **\$1,285,353.00** to the Contractor for work and materials provided in accordance with the bid schedule, which amount includes all federal, state, and local taxes, as applicable. This amount shall be payable through monthly progress payments, subject to the following conditions:

- 3.1 Contractor shall promptly submit to the Owner all proper invoices necessary for the determination of the prices of labor and materials;
- 3.2 Progress payments shall be made in the amount of ninety percent (90%) of the value of labor and materials incorporated in the work, based on the sum of the Contract prices of labor and material, and of materials stored at the worksite, on the basis of substantiating paid invoices, as estimated by the Owner, less the aggregate of all previous payments, until the work performed under this Contract is fifty percent (50%) complete. When and after such work is fifty (50%) complete, the ten percent (10%) of value previously retained may be reduced to five percent (5%) of value completed if Contractor is making satisfactory progress as determined by the Owner, and providing that there is no specific cause or claim requiring a greater amount to be retained. If at any time the Owner determines that satisfactory progress is not being made, the ten percent (10%) retention shall be reinstated for all subsequent progress payments made under this Contract;
- 3.3 The City Engineer shall have the right to finally determine the amount due to Contractor;
- 3.4 Monthly progress payments shall be made by the Owner, on or before fourteen (14) calendar days after the receipt by the Owner of an approved estimate of the work completed;
- 3.5 Contractor agrees that title to materials incorporated in the work, and stored at the site, shall vest with the Owner upon receipt of the corresponding progress payment;

3.6 The remainder of the Contract price, after deducting all such monthly payments and any retention, shall be paid within sixty (60) days after final acceptance of completed work by the Owner. The release of retention or alternate surety shall be made following the Owner's receipt and acceptance of: Contractor's Affidavit Regarding Settlement of Claims, Affidavit of Payment, Consent of Surety for Final Payment, and Unconditional Full and Final lien waivers from all subcontractors and suppliers who have filed an Arizona Preliminary 20 Day Lien Notice in accordance with A.R.S. §§ 33-992.01 and 33-992.02.

**4. Time of Completion.** Contractor agrees to complete all work as described in this Contract within **120 calendar days** from the date of the Owner's Notice to Proceed free of all liens, claims and demands of any kind for materials, equipment, supplies, services, labor, taxes and damages to property or persons, in the manner and under the conditions specified within the time or times specified in this Contract.

**5. Performance of Work.** All work covered by this Contract shall be done in accordance with the latest and best accepted practices of the trades involved. The Contractor shall use only skilled craftsmen experienced in their respective trades to prepare the materials and to perform the work.

**6. Acceptance of Work; Non Waiver.** No failure of the Owner during the progress of the work to discover or reject materials or work not in accordance with this Contract shall be deemed an acceptance of, or a waiver of, defects in work or materials. No payment shall be construed to be an acceptance of work or materials which are not strictly in accordance with the Contract.

**7. Delay of Work.** Any delay in the performance of this Contract due to strikes, lockouts, fires, or other unavoidable casualties beyond the control of the Contractor and not caused by any wrongful act or negligence of the Contractor shall entitle the Contractor to an extension of time equal to the delay so caused. The Contractor shall notify the Owner in writing specifying such cause within twenty-four (24) hours after its occurrence. In the event such delay is caused by strikes, lockouts, or inability to obtain workmen for any other cause, the Owner shall have the right but shall not be obligated to complete the work on the same basis as is provided for in Section 13 below (Contract Violations).

**8. Failure to Complete Project in Timely Manner.** If Contractor fails or refuses to execute this Contract within the time specified in Section 3 above, or such additional time as may be allowed, the proceeds of Contractor's proposal guaranty shall become subject to deposit into the Treasury of the municipality as monies available to compensate the Owner for damages as provided by A.R.S. § 34-201 for the delay in execution of this Contract, and bonds and the performance of work under this Contract, and the necessity of accepting a higher or less desirable bid from such failure or refusal to execute this Contract and bond as required. If Contractor has submitted a certified check or cashier's check as a proposal guaranty, the check shall be returned after execution of this Contract. The certified check or cashier's check of other Bidders shall be returned at the expiration of thirty (30) days from the date of opening of proposals or sooner, if this Contract is executed prior to that time.

**9. Labor Demonstration.** It is understood that the work covered by this Contract is for the Owner's business purposes and that any unfavorable publicity or demonstrations in connection with the work will have a negative effect upon the Owner. If Contractor's actions in performance of the Contract result in any public demonstration on behalf of the laborers or organized labor in the vicinity of the Owner's premises, whether such demonstration is in the form of picketing, posting of placards or signs, violence, threats of violence or in any other form, which in the Owner's judgment, might convey to the public the impression that the Owner or the Contractor or any subcontractor is unfair to laborers or to organized labor, the Owner shall have the right to terminate this Contract immediately, unless the Contractor shall have caused such demonstration to be discontinued within two (2) days after request of the Owner to do so. In the event any such demonstration is attended by violence, the Owner may fix lesser time within which a discontinuance shall be accomplished. In the event of Contract termination, the Contractor agrees to remove from the Premises within twenty-four (24) hours of termination, all machinery, tools, and equipment belonging to it or to its subcontractors. All obligations or liabilities of the Owner to the Contractor shall be discharged by such termination, except the obligation to pay to the Contractor a portion of the Contract price representing the value based upon the Contract prices of labor and materials incorporated in the work as established by the Owner, less the aggregate of all previous payments, but subject to all of the conditions pertaining to payments generally.

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**If to Owner:**

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Senior Procurement Specialist  
211 West Aspen Avenue

**If to Contractor:**

Jon Largo  
Eagle Mountain Construction Company  
3885 E. Industrial Drive

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**26. Time is of the Essence.** Contractor acknowledges that the completion of the Contract by the dates specified final completion is critical to the Owner, time being of the essence of this Contract.

**27. Headings.** The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Contract.

**28. Severability.** If any part of this Contract is determined by a court to be in conflict with any statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Contract shall remain in full force and effect unless the stricken provision leaves the remaining Contract unenforceable.

**IN WITNESS WHEREOF**, the Owner and Contractor, by their duly authorized representatives, have executed this Contract as of the date written above.

*(Please sign in blue ink. Submit original signatures – photocopies not accepted)*

**Owner, City of Flagstaff**

**Contractor, Eagle Mountain  
Construction Company**

\_\_\_\_\_  
Kevin Burke, City Manager

\_\_\_\_\_  
Signature

Attest:

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

**5. D.**

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Eileen Hamlin, Stormwater Services Analyst  
**Date:** 06/29/2012  
**Meeting Date:** 07/17/2012



---

**TITLE:**

**Consideration and Approval of Construction Contract:** Shadow Mountain Phase I: Linda Vista Valley gutters.

**RECOMMENDED ACTION:**

1. Approve the construction contract with Eagle Mountain Construction, Inc. in the amount of \$212,566 with a 90 day contract time ;
2. Approve change order authority in the amount of \$21,256 (10%) of the contract amount to cover potential costs associated with unanticipated items of work; and
3. Authorize the City Manager to execute the necessary documents.

**Policy Decision or Reason for Action:**

**Subsidiary Decisions Points:**

- Policy Decision or Reason for Action:
  - Provide construction phase services for the Shadow Mountain Phase I: Linda Vista Valley Gutters project.

**Financial Impact:**

- The Shadow Mountain Drainage Improvement Project is funded by Stormwater Drainage Improvement (DrIP) funds in the amount of \$233,822 for FY 2013. Account 210-9934-711.

**Connection to Council Goal:**



- Maintain and deliver quality, reliable infrastructure.

#### **Has There Been Previous Council Decision on This:**

- No, design phase services were completed by the WLB Group using the Council Approved On-call Engineering Services contract.

#### **Options and Alternatives**

- Approve the Award as presented, or;
- Reject approval of the award and provide additional direction to staff.

#### **Background/History:**

The bid solicitation was published twice; June 10 and June 17, 2012. Six bids were received on June 25, 2012 at the City Purchasing office, below is a summary of bids received.

<b>Bidder</b>	<b>Total</b>
Eagle Mountain Construction	\$212,566.00
Woodruff Construction	\$221,225.00
L.P.s Excavating	\$221,488.80
RK Sanders	\$226,400.00
SDB, Inc.	\$280,496.43
Standard Construction	\$447,515.00

The Drainage Improvement Program (DrIP) is managed by the Stormwater Management Section to address local drainage problems.

The homes in the 1400 & 1500 blocks on the southside of Linda Vista have had garage and yard flooding problems during periods of heavy rain fall from stormwater running off Harris Way and the two Rainer Loops to the north and crossing Linda Vista and the curb on the south side of the street. In addition, the house at 1455 Linda Vista, on the south side and downstream of the intersections, has experienced structural flooding when the capacity of the gutter is exceeded and water flows over the sidewalk and into the house. This project will result in reducing the amount of water crossing Linda Vista and entering the south gutter.

#### **Key Considerations:**

- In order to promote positive drainage for this area, both intersections and parts of Linda Vista need to be re-graded.
- The re-grading along Linda Vista will be limited to the sections between the north curb and the centerline of the road.
- The new valley gutter will have capacity of 61.9 CFS and the entire roadway will have

capacity of 79.7 CFS; which will contain the entire 100 year storm (43.3 CFS).

**Community Benefits and Considerations:**

The community benefits for this project include:

- Significant reduction in neighborhood flooding potential. The new drainage conveyance has been sized to accommodate anticipated stormwater runoff resulting from the 100 year rainfall event.

**Community Involvement:**

City of Flagstaff Stormwater Utility Staff have contacted owners and residents in proximity to the Shadow Mountain/Linda Vista Drainage Improvement Project and are acquiring the one Temporary Construction Easement needed. Residents will be advised of the anticipated construction schedule, any planned service disruptions and provided the Project Manager's contact information.

During construction, information will be provided directly to area owners and residents through flyers, mailers and media releases as deemed necessary. The design consultant and contractor will be part of community involvement efforts.

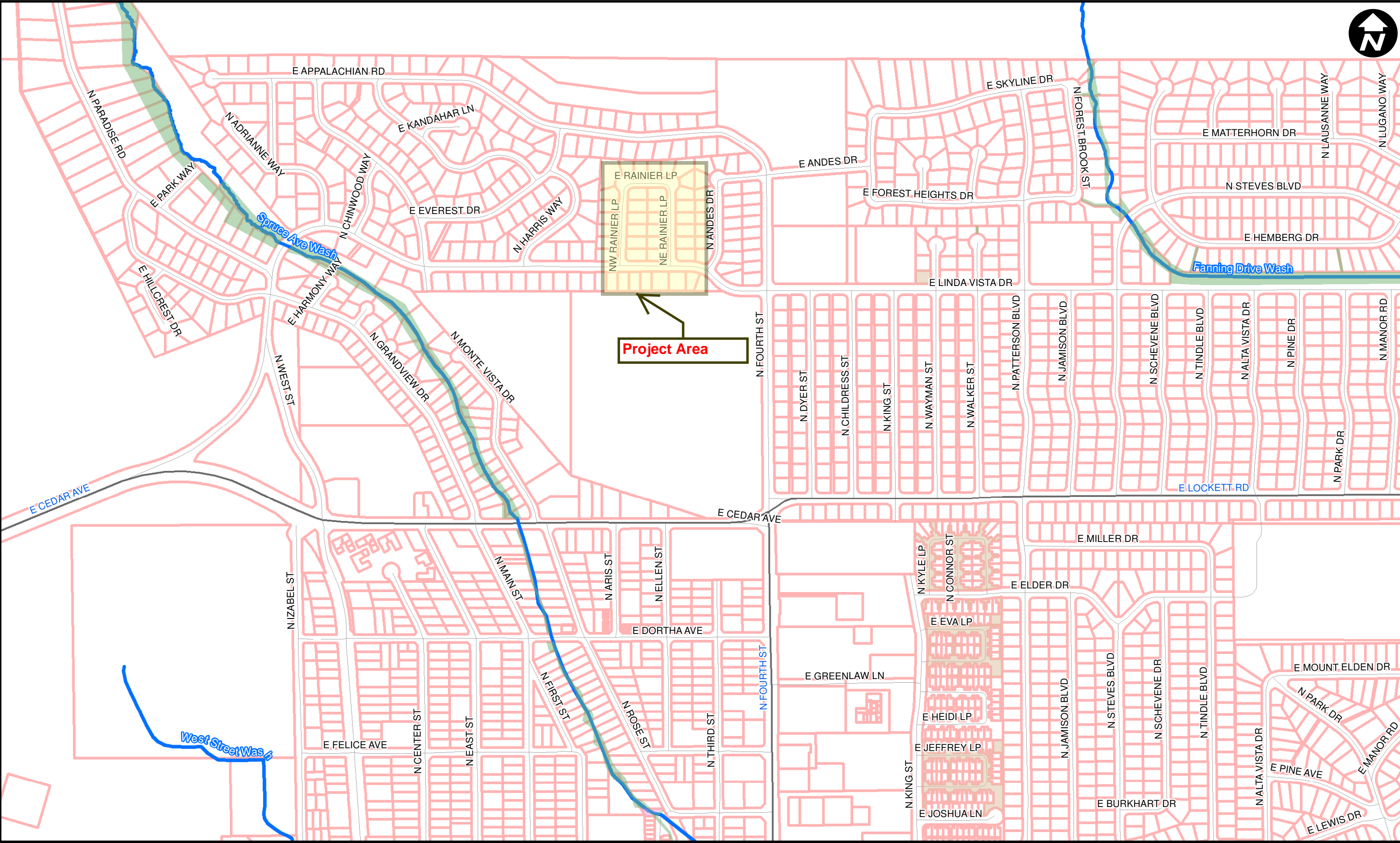
**Expanded Options and Alternatives:**

1. Approve the award as recommended.
2. Reject approval of the award and provide additional direction to staff. This option could delay the construction start until the 2013 construction season.

**Date of Council Approval:**

---

**Attachments:**    Vicinity Map  
                          Construction Agreement



**Project Area**

1 inch = 500 feet

***Linda Vista***

## CONSTRUCTION CONTRACT

**City of Flagstaff, Arizona  
And  
Eagle Mountain Construction Company**

This Construction Contract ("Contract") is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2012, by and between the City of Flagstaff, an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona ("Owner") and Eagle Mountain Construction Company, an Arizona company ("Contractor") with offices at 3885 East Industrial Drive, Flagstaff, Arizona. Contractor and the Owner may be referred to each individually as a "Party" and collectively as the "Parties."

### RECITALS

- A. Owner desires to obtain construction services; and
- B. Contractor has available and offers to provide personnel and materials necessary to accomplish the work and complete the Project as described in the Scope of Work within the required time in accordance with the calendar days included in this Contract.

NOW, THEREFORE, the Owner and Contractor agree as follows:

**1. Scope of Work.** The Contractor shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all work for the construction of **Shadow Mountain Phase I: Linda Vista Valley Gutters** (the "Project"). Contractor shall construct the Project for the Owner in a good, workmanlike and substantial manner and to the satisfaction of the Owner through its engineers and under the direction and supervision of the City Engineer, or his properly authorized agents including but not limited to project managers and project engineers. Contractor's work shall be strictly pursuant to and in conformity with the Contract.

- 1.1 A Pre-Construction Conference will be held with the successful Contractor after the Notice of Award is issued. The date and time of the Conference will be agreed upon between the Contractor and the Engineer. The meeting will be held at City Hall, 211 West Aspen Avenue, Flagstaff, AZ 86001. The purpose of the meeting is to outline specific construction items and procedures that the City of Flagstaff (the "Owner") feels require special attention on the part of the Contractor. The Contractor may also present any variations in procedures to improve the workability of the Project, reduce the cost, or reduce inconvenience to the public. The Contractor shall submit a written proposal at this conference outlining intended plans for pavement replacement, maintaining continuous access to residences and businesses along the construction site, and traffic control.

**2. Contract; Ownership of Work.** Contractor shall furnish and deliver all of the materials and perform all of the work in accordance with this Contract; Construction Plans; Special Provisions; the City of Flagstaff Engineering Design and Construction Standards and

Specifications; the latest version of the Maricopa Association of Governments (“MAG”) Specifications for Public Works Construction and City revisions to the MAG Specifications for Public Works Construction (“Exhibit A”); and any Arizona Department of Transportation (A.D.O.T.) Standards that may be referenced on the Plans or in the specifications, incorporated in this Contract by reference, plans and associated documents. All provisions of the Invitation for Construction Bids, Performance Bond, Payment Bond, Certificates of Insurance, Addenda, Change Orders and Field Orders, if any, are hereby incorporated into this Contract. All materials, work, specifications and plans shall be the property of the Owner.

The following exhibits are incorporated by reference and are expressly made a part of this Contract:

2.1.1 Revisions of MAG Standard Specifications for Public Works Construction Exhibit A  
 (“Flagstaff Addendum to MAG”)

2.1.2 Special Provisions Exhibit B

**3. Payments.** In consideration of the faithful performance of the work described in this Contract, the Owner shall pay an amount not to exceed **\$212,566.00** to the Contractor for work and materials provided in accordance with the bid schedule, which amount includes all federal, state, and local taxes, as applicable. This amount shall be payable through monthly progress payments, subject to the following conditions:

- 3.1 Contractor shall promptly submit to the Owner all proper invoices necessary for the determination of the prices of labor and materials;
- 3.2 Progress payments shall be made in the amount of ninety percent (90%) of the value of labor and materials incorporated in the work, based on the sum of the Contract prices of labor and material, and of materials stored at the worksite, on the basis of substantiating paid invoices, as estimated by the Owner, less the aggregate of all previous payments, until the work performed under this Contract is fifty percent (50%) complete. When and after such work is fifty (50%) complete, the ten percent (10%) of value previously retained may be reduced to five percent (5%) of value completed if Contractor is making satisfactory progress as determined by the Owner, and providing that there is no specific cause or claim requiring a greater amount to be retained. If at any time the Owner determines that satisfactory progress is not being made, the ten percent (10%) retention shall be reinstated for all subsequent progress payments made under this Contract;
- 3.3 The City Engineer shall have the right to finally determine the amount due to Contractor;
- 3.4 Monthly progress payments shall be made by the Owner, on or before fourteen (14) calendar days after the receipt by the Owner of an approved estimate of the work completed;
- 3.5 Contractor agrees that title to materials incorporated in the work, and stored at the site, shall vest with the Owner upon receipt of the corresponding progress payment;

3.6 The remainder of the Contract price, after deducting all such monthly payments and any retention, shall be paid within sixty (60) days after final acceptance of completed work by the Owner. The release of retention or alternate surety shall be made following the Owner's receipt and acceptance of: Contractor's Affidavit Regarding Settlement of Claims, Affidavit of Payment, Consent of Surety for Final Payment, and Unconditional Full and Final lien waivers from all subcontractors and suppliers who have filed an Arizona Preliminary 20 Day Lien Notice in accordance with A.R.S. §§ 33-992.01 and 33-992.02.

**4. Time of Completion.** Contractor agrees to complete all work as described in this Contract within **90 calendar days** from the date of the Owner's Notice to Proceed free of all liens, claims and demands of any kind for materials, equipment, supplies, services, labor, taxes and damages to property or persons, in the manner and under the conditions specified within the time or times specified in this Contract.

**5. Performance of Work.** All work covered by this Contract shall be done in accordance with the latest and best accepted practices of the trades involved. The Contractor shall use only skilled craftsmen experienced in their respective trades to prepare the materials and to perform the work.

**6. Acceptance of Work; Non Waiver.** No failure of the Owner during the progress of the work to discover or reject materials or work not in accordance with this Contract shall be deemed an acceptance of, or a waiver of, defects in work or materials. No payment shall be construed to be an acceptance of work or materials which are not strictly in accordance with the Contract.

**7. Delay of Work.** Any delay in the performance of this Contract due to strikes, lockouts, fires, or other unavoidable casualties beyond the control of the Contractor and not caused by any wrongful act or negligence of the Contractor shall entitle the Contractor to an extension of time equal to the delay so caused. The Contractor shall notify the Owner in writing specifying such cause within twenty-four (24) hours after its occurrence. In the event such delay is caused by strikes, lockouts, or inability to obtain workmen for any other cause, the Owner shall have the right but shall not be obligated to complete the work on the same basis as is provided for in Section 13 below (Contract Violations).

**8. Failure to Complete Project in Timely Manner.** If Contractor fails or refuses to execute this Contract within the time specified in Section 3 above, or such additional time as may be allowed, the proceeds of Contractor's proposal guaranty shall become subject to deposit into the Treasury of the municipality as monies available to compensate the Owner for damages as provided by A.R.S. § 34-201 for the delay in execution of this Contract, and bonds and the performance of work under this Contract, and the necessity of accepting a higher or less desirable bid from such failure or refusal to execute this Contract and bond as required. If Contractor has submitted a certified check or cashier's check as a proposal guaranty, the check shall be returned after execution of this Contract. The certified check or cashier's check of other Bidders shall be returned at the expiration of thirty (30) days from the date of opening of proposals or sooner, if this Contract is executed prior to that time.

**9. Labor Demonstration.** It is understood that the work covered by this Contract is for the Owner's business purposes and that any unfavorable publicity or demonstrations in connection with the work will have a negative effect upon the Owner. If Contractor's actions in performance of the Contract result in any public demonstration on behalf of the laborers or organized labor in the vicinity of the Owner's premises, whether such demonstration is in the form of picketing, posting of placards or signs, violence, threats of violence or in any other form, which in the Owner's judgment, might convey to the public the impression that the Owner or the Contractor or any subcontractor is unfair to laborers or to organized labor, the Owner shall have the right to terminate this Contract immediately, unless the Contractor shall have caused such demonstration to be discontinued within two (2) days after request of the Owner to do so. In the event any such demonstration is attended by violence, the Owner may fix lesser time within which a discontinuance shall be accomplished. In the event of Contract termination, the Contractor agrees to remove from the Premises within twenty-four (24) hours of termination, all machinery, tools, and equipment belonging to it or to its subcontractors. All obligations or liabilities of the Owner to the Contractor shall be discharged by such termination, except the obligation to pay to the Contractor a portion of the Contract price representing the value based upon the Contract prices of labor and materials incorporated in the work as established by the Owner, less the aggregate of all previous payments, but subject to all of the conditions pertaining to payments generally.

**10. Material Storage.** During the progress of the work, the Contractor shall arrange for office facilities and for the orderly storage of materials and equipment. Contractor shall erect any temporary structures required for the work at his or her own expense. The Contractor shall at all times keep the premises reasonably free from debris and in a condition which will not increase fire hazards. Upon completion of the work, the Contractor shall remove all temporary buildings and facilities and all equipment, surplus materials and supplies belonging to the Contractor. Contractor shall leave the Premises in good order, clean, and ready to use by the Owner. The establishment of any temporary construction yard, material storage area or staging area to be located within City of Flagstaff limits and outside the public right-of-way or Project limits generally requires a Temporary Use Permit. (See Exhibit A, Section 107.2.1.)

**11. Assignment.** Contractor shall not assign this Contract, in whole or in part, without the prior written consent of the Owner.

**12. Notices.** All notices or demands required to be given, pursuant to the terms of this Contract, shall be given to the other Party in writing, delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

**If to Owner:**

Patrick Brown, C.P.M.  
Senior Procurement Specialist

**If to Contractor:**

Jon Largo  
Eagle Mountain Construction Company

211 West Aspen Avenue  
Flagstaff, AZ 86001

3885 E. Industrial Drive  
Flagstaff, AZ 86004

**13. Contract Violations.** In the event of any of the provisions of this Contract are violated by the Contractor or by any of Contractor's subcontractors, the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate such Contract (the "Notice to Terminate"). The Contract shall terminate within five (5) days of the date Contractor receives the Notice to Terminate, unless the violation ceases and Contractor makes arrangements for correction satisfactory to the Owner. In the event of any such termination, the Owner shall immediately serve notice of the termination upon the Surety by registered mail, return receipt requested. The Surety shall have the right to take over and perform the Contract. If the Surety does not commence performance within ten (10) days from the date of receipt of the Owner's notice of termination, the Owner may complete the work at the expense of the Contractor, and the Contractor and his or her Surety shall be liable to the Owner for any excess cost incurred by the Owner to complete the work. If the Owner completes the work, the Owner may take possession of and utilize such materials, appliances and plants as may be on the worksite site and necessary for completion of the work.

**14. Contractor's Liability and Indemnification.** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the Owner, its agents, representatives, officers, directors, officials and employees shall arise in connection with the claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable. The amount and type of insurance coverage requirements set forth in the Contract (Section 103.6 of Exhibit A) will in no way be construed as limiting the scope of the indemnity in this paragraph.

**15. Non Appropriation.** In the event that no funds or insufficient funds are appropriated and budgeted in any fiscal period of the Owner to meet the Owner's obligations under this Contract, the Owner will notify Contractor in writing of such occurrence, and this Contract will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Contract are exhausted. No payments shall be made or due to the other party under this Contract beyond these amounts appropriated and budgeted by the Owner to fund the Owner's obligations under this Contract.

**16. Amendment of Contract.** This Agreement may not be modified or altered except in writing and signed by duly authorized representatives of the parties.



**17. Subcontracts.** Contractor shall not enter into any subcontract, or issue any purchase order for the completed work, or any substantial part of the work, unless in each instance, prior written approval shall have been given by the Owner. Contractor shall be fully responsible to the Owner for acts and omissions of Contractor's subcontractors and all persons either directly or indirectly employed by them.

**18. Cancellation for Conflict of Interest.** This Contract is subject to the cancellation provisions of A.R.S. § 38-511.

**19. Compliance with All Laws.** Contractor shall comply with all applicable laws, statutes, ordinances, regulations and governmental requirements in the performance of this Contract.

**20. Employment of Aliens.** Contractor shall comply with A.R.S. § 34-301, which provides that a person who is not a citizen or ward of the United States shall not be employed upon or in connection with any state, county or municipal public works project.

**21. Compliance with Federal Immigration Laws and Regulations.** Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. 23-214.A. Contractor acknowledges that pursuant to A.R.S. 41-4401 a breach of this warranty is a material breach of this contract subject to penalties up to and including termination of this contract, and that the City retains the legal right to inspect the papers of any employee who works on the contract to ensure compliance with this warranty.

**22. Business Operations in Sudan/Iran.** In accordance with A.R.S. § 35-397, the Contractor certifies that the Contractor and its affiliates and subsidiaries do not have scrutinized business operations in Sudan or Iran. If the City determines that the Provider's certification is false, the City may impose all legal and equitable remedies available to it, including but not limited to termination of this Agreement.

**23. Contractor's Warranty.** Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214.A, Verification of Employment Eligibility. Contractor shall not employ aliens in accordance with A.R.S. § 34-301, Employment of Aliens on Public Works Prohibited. Contractor acknowledges that pursuant to A.R.S. § 41-4401, Government Procurement; E-Verify Requirement; Definitions, a breach of this warranty is a material breach of this contract subject to penalties up to and including termination of this Contract, and that the Owner retains the legal right to inspect the papers of any employee who works on the Contract to ensure compliance with this warranty.

**24. Jurisdiction and Venue.** This Agreement shall be administered and interpreted under the laws of the State of Arizona. The Contractor hereby submits itself to the original jurisdiction of those courts located within Coconino County, Arizona.

**25. Attorney's Fees.** If suit or action is initiated in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as

the court may adjudge reasonable as attorney fees, or in event of appeal as allowed by the appellate court.

**26. Time is of the Essence.** Contractor acknowledges that the completion of the Contract by the dates specified final completion is critical to the Owner, time being of the essence of this Contract.

**27. Headings.** The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Contract.

**28. Severability.** If any part of this Contract is determined by a court to be in conflict with any statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Contract shall remain in full force and effect unless the stricken provision leaves the remaining Contract unenforceable.

**IN WITNESS WHEREOF**, the Owner and Contractor, by their duly authorized representatives, have executed this Contract as of the date written above.

*(Please sign in blue ink. Submit original signatures – photocopies not accepted)*

**Owner, City of Flagstaff**

**Contractor, Eagle Mountain  
Construction Company**

\_\_\_\_\_  
Kevin Burke, City Manager

\_\_\_\_\_  
Signature

Attest:

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

**5. E.**

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Valerie Hernandez, Communications Manager  
**Date:** 06/11/2012  
**Meeting Date:** 07/17/2012



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**TITLE:**

**Consideration and Approval of Intergovernmental Agreement:** Dispatch services.

**RECOMMENDED ACTION:**

Approve the Intergovernmental Agreement with Highlands Fire District.\

**Policy Decision or Reason for Action:**

The City of Flagstaff acting through the Police Department, desires to continue to provide dispatching services to the Highlands Fire District. This agreement provides for a five year contract during which dispatch services will be provided to the Highlands Fire District.

Subsidiary Decisions Points: None

**Financial Impact:**

This agreement will allow the Police Department to continue providing the same dispatch services to the Highlands Fire District as it has in the past. Highlands Fire District is billed according to the total budgetary cost of operating the Communications Center, the previous year's total calls for service and an estimate of the total calls for service for the following year. This is calculated at a cost per call rate and billed as such. These funds are utilized to offset the cost to operate the Communication Center.

**Connection to Council Goal:**

Maintain public safety short response times and encourage expanded health services.  
Maintain and deliver quality, reliable infrastructure.

In 2007, the IGA contract was approved by Council.

The Council may chose to approve this agreement or reject it. If approved, this Intergovernmental Agreement will allow for continued dispatch services at the existing level.

Background/History: The Flagstaff Police Department has provided dispatch services to Highlands Fire District for several years. The current contract expires June 30, 2012.

The combined 911 Center provides fire, emergency medical and law enforcement dispatch services from a single point of contact which enables the most comprehensive responses to our citizens and users.

Staff from the Flagstaff Police Department interacts with members of Highlands Fire District to address dispatcher training and operational concerns as they arise or are scheduled. Additionally, the Flagstaff Police Department holds quarterly dispatch users meetings to assist in future planning and to discuss opportunities for improved services, consistency, and standardized work flows.

**Attachments:** COF Highlands Fire IGA 2012  
COF Highlands Fire IGA 2012

LAW OFFICES  
**LEONARD & FELKER, P.L.C.**  
ATTORNEYS AND COUNSELORS AT LAW

DAVID J. LEONARD\*  
SIDNEY LEX FELKER  
DONNA M. AVERSA  
BROOKE FELKER-JOHNSTON

7440 N. ORACLE ROAD, BLDG. 2  
TUCSON, ARIZONA 85704-6376  
TELEPHONE FACSIMILE  
(520) 742-0440 (520) 622-7337

LOS ANGELES OFFICE  
5757 WILSHIRE BLVD.  
SUITE 460  
LOS ANGELES, CA 90036  
(310) 205-4820

\*ALSO ADMITTED IN CALIFORNIA

June 4, 2012

Mike Bradley, Fire Chief  
Highlands Fire Department  
2838 Kona Trail  
Flagstaff, AZ 86001

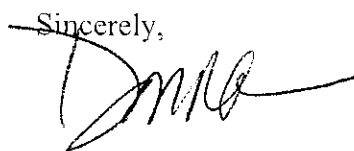
RE: Intergovernmental Agreement For Dispatch Services (IGA)  
between City of Flagstaff and Highlands Fire District

Dear Chief Bradley:

Attached is the signed original of the above- referenced Intergovernmental Agreement  
For Dispatch Services (IGA) for your records.

Should you have any questions, feel free to contact me.

Sincerely,



Donna M. Aversa

DMA/cg

Attachment

When recorded, mail to:  
Clerk's Office  
City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

## **INTERGOVERNMENTAL AGREEMENT FOR DISPATCH SERVICES**

**between**

**City of Flagstaff  
and  
Highlands Fire District**

This intergovernmental agreement for dispatch services ("Agreement") is entered into this 1st of July, 2007, between the City of Flagstaff ("City"), an Arizona municipal corporation, with offices at 211 W. Aspen Avenue, Flagstaff, Arizona, on behalf of the Flagstaff Police Department ("FPD") and the Highlands Fire District (the "District"), a political subdivision of the State of Arizona, created pursuant to A.R.S. § 48-261, with offices at 568 Kona Trail, Kachina Village, Arizona..

### **RECITALS**

A. The City, through the FPD, operates, manages and maintains a dispatching facility which includes an automated computer-aided dispatching system, telephones, recording equipment and dispatch personnel for the operation of a dispatch center located at the Law Enforcement Administrative Facility. The FPD is the primary Public Safety Answering Point (PSAP) for all 9-1-1 calls within its area of responsibility. The FPD provides emergency dispatching for police and fire agencies within the City of Flagstaff and contracts to provide dispatch services to other agencies and organizations.

B. The District, desires that the City, through the FPD, provide emergency dispatching for all calls for service occurring within the response area of the Highlands Fire District. The City agrees to provide such services to the District, in accordance with the terms of this Agreement.

NOW, THEREFORE, pursuant to Arizona Revised Statutes Section 11-952, authorizing agreements for services among two or more public agencies, and in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

#### **1. Term**

This Agreement shall become effective on July 1, 2012 at 0001 hours, and, subject to early termination or renewal as provided below in Section 4, shall continue until June 30, 2017 at 2359 hours.

#### **2. Scope of City Services**

The City, through the FPD, agrees to provide emergency dispatching services to the District, twenty-four (24) hours a day, seven (7) days a week as follows:

2.1 The FPD will provide automated dispatching utilizing computer-aided dispatching. The capabilities the FPD will make available to the District include: location of events utilizing cross streets; addresses and varied map coordinates as may be available; maintenance of status time, including time received, time dispatched, time first unit on scene and time last unit cleared scene and other fire service benchmark times as available.

2.2 If requested by the District, the FPD will provide summary listings to the District of call data by month, quarter or year as generated by the CAD system.

2.3 The FPD will record all District radio transmissions from the primary dispatch channel as received at the dispatch center, and all telephone transmissions on emergency lines present in the FPD dispatch center. The FPD will maintain all recordings for a period not to exceed three hundred sixty-five (365) calendar days, after which such records shall be destroyed. When requested in writing, the FPD will provide recordings of incidents to the District in a timely manner on standard compact disc.

2.4 The City maintains two redundant on-line servers for the CAD operation and will regularly backup these servers. Every effort will be made to maintain a 100% up- time and will schedule required downtime maintenance with users whenever possible. The City cannot be responsible for unexpected downtime and maintains a manual backup for such eventuality

2.5 All supervision, hiring and discipline of communications personnel will remain the sole responsibility and under the authority of the FPD.

### **3. Highlands Fire District Obligations**

3.1 The District, agrees to supply and maintain all equipment required to provide voice radio dispatching up to a demarcation point established as the connection to the FPD dispatch center console interface patch panel. Additionally, the District, agrees to pay for the installation and cost of any radio equipment or telecommunications circuits beyond the demarcation point, which are added to the FPD dispatch console equipment in order to provide basic dispatch service. The FPD agrees to maintain all equipment beyond the demarcation point following installation and any warranty period expiration.

3.2 The District agrees to work within any existing procedures used by the FPD for dispatching. However, procedures for specific requirements of fire dispatching for the District, if agreed upon by both parties, shall be documented in the Flagstaff Police Department Communications Manual and thereafter shall be utilized for dispatching services for the District.

3.3 The District agrees to pay the City fees for services in quarterly payments within thirty (30) days following invoicing at the end of each quarter. Fees and costs associated with the City's provision of dispatch services to the District will be based upon the District's dispatched calls for service as a percentage of the dispatch center's total calls for service plus a calculation for capital replacement and indirect costs. That percentage will be used to calculate fees based

upon the total cost to the City for operating the dispatch center. Fees will be based upon the prior fiscal year budget and actual calls for service for the period being billed.

3.3.1 A call for service shall be defined as any call where a field unit is sent to a location of an incident or to assist a citizen, or any time a field unit initiates activity that would, otherwise, have resulted in the dispatch of a field unit.

#### **4. Termination**

4.1 Either party may terminate this Agreement by providing written notice to the other no less than ninety (90) days before the anniversary date of this Agreement.

4.2 In the event of termination of this Agreement by the District, or by the City under Section 4.3, the District shall be responsible for all costs associated with the disconnecting and removal of all radio and telecommunications circuits which were installed in accordance with Section 3.1, and which are exclusive to the District.

4.3 The City shall also have the right to terminate this Agreement upon written notice to the District in the event the District fails to make any payment due the City under this Agreement within thirty (30) calendar days of the due date.

#### **5. Liability and Indemnification**

5.1 The City, the FPD and their officials, employees and agents, shall not be liable for damages to the District or third parties as a result of any failure by the FPD to perform any of the FPD's obligations set forth in Section 2 of this Agreement if such failure, in whole or in part, arises out of or results from the failure of the District to submit correct and complete data to the FPD or the failure of the District to provide or maintain equipment as set forth in Section 3.1.

5.2 The City, the FPD and their agents, officials and employees, shall not be liable to the District for failure to comply with any of the terms and conditions of this Agreement where any failure to comply is caused by an act of God, court order, government regulation or requirement, other than those imposed by the City, strike or labor difficulty, fire, flood, windstorm, breakdown or other damage to equipment, power failure or any other cause beyond the reasonable control of the City.

5.3 The District agrees to indemnify, hold harmless and defend the City, the FPD and their agents, officials and employees, from and against any and all claims, demands, costs, actions, suits, liabilities, losses and expenses, of whatever kind and nature whatsoever, that may arise out of or result from any act, action or omission of the District, their employees, agents or contractors under this Agreement, including, but not limited to, the District's failure to submit correct and complete data to the FPD or the failure of the District to provide and maintain equipment as set forth in Section 3.1. The District's obligations under this indemnity provision shall survive any termination of this Agreement.

5.4 Except as otherwise provided in this Section 5, the City covenants and agrees to indemnify, hold harmless and defend the District, and their agents, officials and employees, from and against any and all claims, demands, costs, actions, suits, liabilities, losses and expenses, of



whatever kind and nature whatsoever, that may arise out of or result from any act, action or omission of the City, the FPD, their employees, agents or contractors under this Agreement, or as a result of any failure of any equipment which the City is required to maintain under the terms of this Agreement. The City's covenants and obligations under this indemnity provision shall survive any termination of this Agreement.

## **6. Dispute Resolution**

6.1 If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to arbitration, if required under A.R.S. § 12-1518, to litigation or to some other dispute resolution procedure. Mediation will be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, [www.cpradr.org](http://www.cpradr.org), with the exception of the mediator selection provisions. The parties shall select one or more mediators acceptable to each party. Each party agrees to bear its own costs in mediation.

6.2 The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This mediation provision is not intended to constitute a waiver of a party's right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if a party seeks provisional relief under the Arizona Rules of Civil Procedure.

## **7. Notices**

Unless otherwise specified in this Agreement, any notice or other communication required or permitted to be given shall be in writing and sent to the address given below for the party to be notified, or to such other address notice of which is given:

If to City:

Deputy City Manager  
City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

If to Highlands Fire District:

Mike Bradley, Chief  
Highlands Fire District  
568 Kona Trail  
Flagstaff, Arizona 86001

Copy to:

Chief of Police  
Flagstaff Police Department  
911 E. Sawmill Road  
Flagstaff, Arizona 86001

## **8. General Provisions**

8.1 Maintenance. Maintenance of the FPD dispatch center and all on-premise Public Safety Answering Point (PSAP) and radio equipment shall be the sole responsibility of the FPD.

8.2 Status of Employees. Employees of the respective parties shall not be considered employees or agents of the other, and the City and the District agree that they shall retain sole responsibility and authority over their respective employees.

8.3 Authorization to Contract. Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations under this Agreement and has taken all required acts or actions necessary to authorize the same.

8.4 Integration; Modification. Each party acknowledges and agrees that it has not relied upon any statements, representations, agreements or warranties, except as expressed in this Agreement, and that this Agreement constitutes the parties' entire agreement with respect to the matters addressed in this document. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded and merged in this Agreement. Except as to modifications to Attachment A to this Agreement as set forth in Section 3.3, this Agreement may be modified or amended only by written agreement signed by both parties and recorded by the County Recorder, and any modification or amendment will become effective on the date so specified.

8.5 Cancellation for Conflict of Interest. Pursuant to Arizona Revised Statutes Section 38-511, either the City or the District may cancel this Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of a party is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of the other party of the Agreement in any capacity or as a consultant to the other party of the Agreement with respect to the subject matter of this Agreement.

8.6 Waiver. No failure to enforce any condition or covenant of this Agreement will imply or constitute a waiver of the right of a party to insist upon performance of the condition or covenant, or of any other provision of this Agreement, nor will any waiver by either party of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach under this Agreement.

8.7 Compliance with Immigration Laws and Regulations. Pursuant to the provisions of A.R.S. §41-4401, each Party warrants to the Parties that the warranting Party and its subconsultants, if any, are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). The Parties acknowledge that a breach of this warranty by a Party or any of its subconsultants is a material breach of this IGA subject to penalties up to and including termination of this IGA or any subcontract. Each Party retains the legal right to inspect the papers of any employee of the other Parties or any subconsultant who works on this IGA to ensure compliance with this warranty.

8.7.1 A Party may conduct random verification of the employment records of the other Parties, and any of its subconsultants to ensure compliance with this warranty.

8.7.2 A Party will not consider the other Parties or any of their subconsultants in material breach of the foregoing warranty if the other Party and its subconsultants establish that they have complied with the employment verification provisions

prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

8.7.3 The provisions of this Article must be included in any contract a Party enters into with any and all of its subconsultants who provide services under this IGA or any subcontract. As used in this Section 5.10 "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

8.8 Prohibition of Doing Business with Sudan and Iran. Pursuant to A.R.S. §§35-391.06 and 35-393-06, each Party hereby certifies to the other Parties that the certifying Party does not have "scrutinized" business operations, as defined in A.R.S. §§35-391 and 35-393, in either Sudan or Iran. The Parties acknowledge that, in the event either of the certifications to a Party by the other Parties contained in this paragraph is determined to be false, this IGA may be terminated and the terminating Parties may exercise other remedies as provided by law, in accordance with A.R.S. §§35-391.06 and 35-393-06.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year written above.

**City of Flagstaff**

**Highlands Fire District**

\_\_\_\_\_  
Gerald W. Nabours, Mayor

\_\_\_\_\_  
Mike Bradley, Chief

Attest:

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

Approved as to form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
*Donna M. Am...* 6-1-12  
Attorney for District

LAW OFFICES  

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**LEONARD & FELKER, P.L.C.**  

---

ATTORNEYS AND COUNSELORS AT LAW

DAVID J. LEONARD\*  
SIDNEY LEX FELKER  
DONNA M. AVERSA  
BROOKE FELKER-JOHNSTON

7440 N. ORACLE ROAD, BLDG. 2  
TUCSON, ARIZONA 85704-6376  
TELEPHONE FACSIMILE  
(520) 742-0440 (520) 622-7337

LOS ANGELES OFFICE  
5757 WILSHIRE BLVD.  
SUITE 460  
LOS ANGELES, CA 90036  
(310) 205-4820

\*ALSO ADMITTED IN CALIFORNIA

June 4, 2012

Mike Bradley, Fire Chief  
Highlands Fire Department  
2838 Kona Trail  
Flagstaff, AZ 86001

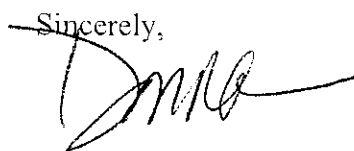
RE: Intergovernmental Agreement For Dispatch Services (IGA)  
between City of Flagstaff and Highlands Fire District

Dear Chief Bradley:

Attached is the signed original of the above- referenced Intergovernmental Agreement  
For Dispatch Services (IGA) for your records.

Should you have any questions, feel free to contact me.

Sincerely,



Donna M. Aversa

DMA/cg

Attachment

When recorded, mail to:  
Clerk's Office  
City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

## **INTERGOVERNMENTAL AGREEMENT FOR DISPATCH SERVICES**

**between**

**City of Flagstaff  
and  
Highlands Fire District**

This intergovernmental agreement for dispatch services ("Agreement") is entered into this 1st of July, 2007, between the City of Flagstaff ("City"), an Arizona municipal corporation, with offices at 211 W. Aspen Avenue, Flagstaff, Arizona, on behalf of the Flagstaff Police Department ("FPD") and the Highlands Fire District (the "District"), a political subdivision of the State of Arizona, created pursuant to A.R.S. § 48-261, with offices at 568 Kona Trail, Kachina Village, Arizona..

### **RECITALS**

A. The City, through the FPD, operates, manages and maintains a dispatching facility which includes an automated computer-aided dispatching system, telephones, recording equipment and dispatch personnel for the operation of a dispatch center located at the Law Enforcement Administrative Facility. The FPD is the primary Public Safety Answering Point (PSAP) for all 9-1-1 calls within its area of responsibility. The FPD provides emergency dispatching for police and fire agencies within the City of Flagstaff and contracts to provide dispatch services to other agencies and organizations.

B. The District, desires that the City, through the FPD, provide emergency dispatching for all calls for service occurring within the response area of the Highlands Fire District. The City agrees to provide such services to the District, in accordance with the terms of this Agreement.

NOW, THEREFORE, pursuant to Arizona Revised Statutes Section 11-952, authorizing agreements for services among two or more public agencies, and in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

#### **1. Term**

This Agreement shall become effective on July 1, 2012 at 0001 hours, and, subject to early termination or renewal as provided below in Section 4, shall continue until June 30, 2017 at 2359 hours.

#### **2. Scope of City Services**

The City, through the FPD, agrees to provide emergency dispatching services to the District, twenty-four (24) hours a day, seven (7) days a week as follows:

2.1 The FPD will provide automated dispatching utilizing computer-aided dispatching. The capabilities the FPD will make available to the District include: location of events utilizing cross streets; addresses and varied map coordinates as may be available; maintenance of status time, including time received, time dispatched, time first unit on scene and time last unit cleared scene and other fire service benchmark times as available.

2.2 If requested by the District, the FPD will provide summary listings to the District of call data by month, quarter or year as generated by the CAD system.

2.3 The FPD will record all District radio transmissions from the primary dispatch channel as received at the dispatch center, and all telephone transmissions on emergency lines present in the FPD dispatch center. The FPD will maintain all recordings for a period not to exceed three hundred sixty-five (365) calendar days, after which such records shall be destroyed. When requested in writing, the FPD will provide recordings of incidents to the District in a timely manner on standard compact disc.

2.4 The City maintains two redundant on-line servers for the CAD operation and will regularly backup these servers. Every effort will be made to maintain a 100% up- time and will schedule required downtime maintenance with users whenever possible. The City cannot be responsible for unexpected downtime and maintains a manual backup for such eventuality

2.5 All supervision, hiring and discipline of communications personnel will remain the sole responsibility and under the authority of the FPD.

### **3. Highlands Fire District Obligations**

3.1 The District, agrees to supply and maintain all equipment required to provide voice radio dispatching up to a demarcation point established as the connection to the FPD dispatch center console interface patch panel. Additionally, the District, agrees to pay for the installation and cost of any radio equipment or telecommunications circuits beyond the demarcation point, which are added to the FPD dispatch console equipment in order to provide basic dispatch service. The FPD agrees to maintain all equipment beyond the demarcation point following installation and any warranty period expiration.

3.2 The District agrees to work within any existing procedures used by the FPD for dispatching. However, procedures for specific requirements of fire dispatching for the District, if agreed upon by both parties, shall be documented in the Flagstaff Police Department Communications Manual and thereafter shall be utilized for dispatching services for the District.

3.3 The District agrees to pay the City fees for services in quarterly payments within thirty (30) days following invoicing at the end of each quarter. Fees and costs associated with the City's provision of dispatch services to the District will be based upon the District's dispatched calls for service as a percentage of the dispatch center's total calls for service plus a calculation for capital replacement and indirect costs. That percentage will be used to calculate fees based

upon the total cost to the City for operating the dispatch center. Fees will be based upon the prior fiscal year budget and actual calls for service for the period being billed.

3.3.1 A call for service shall be defined as any call where a field unit is sent to a location of an incident or to assist a citizen, or any time a field unit initiates activity that would, otherwise, have resulted in the dispatch of a field unit.

#### **4. Termination**

4.1 Either party may terminate this Agreement by providing written notice to the other no less than ninety (90) days before the anniversary date of this Agreement.

4.2 In the event of termination of this Agreement by the District, or by the City under Section 4.3, the District shall be responsible for all costs associated with the disconnecting and removal of all radio and telecommunications circuits which were installed in accordance with Section 3.1, and which are exclusive to the District.

4.3 The City shall also have the right to terminate this Agreement upon written notice to the District in the event the District fails to make any payment due the City under this Agreement within thirty (30) calendar days of the due date.

#### **5. Liability and Indemnification**

5.1 The City, the FPD and their officials, employees and agents, shall not be liable for damages to the District or third parties as a result of any failure by the FPD to perform any of the FPD's obligations set forth in Section 2 of this Agreement if such failure, in whole or in part, arises out of or results from the failure of the District to submit correct and complete data to the FPD or the failure of the District to provide or maintain equipment as set forth in Section 3.1.

5.2 The City, the FPD and their agents, officials and employees, shall not be liable to the District for failure to comply with any of the terms and conditions of this Agreement where any failure to comply is caused by an act of God, court order, government regulation or requirement, other than those imposed by the City, strike or labor difficulty, fire, flood, windstorm, breakdown or other damage to equipment, power failure or any other cause beyond the reasonable control of the City.

5.3 The District agrees to indemnify, hold harmless and defend the City, the FPD and their agents, officials and employees, from and against any and all claims, demands, costs, actions, suits, liabilities, losses and expenses, of whatever kind and nature whatsoever, that may arise out of or result from any act, action or omission of the District, their employees, agents or contractors under this Agreement, including, but not limited to, the District's failure to submit correct and complete data to the FPD or the failure of the District to provide and maintain equipment as set forth in Section 3.1. The District's obligations under this indemnity provision shall survive any termination of this Agreement.

5.4 Except as otherwise provided in this Section 5, the City covenants and agrees to indemnify, hold harmless and defend the District, and their agents, officials and employees, from and against any and all claims, demands, costs, actions, suits, liabilities, losses and expenses, of

whatever kind and nature whatsoever, that may arise out of or result from any act, action or omission of the City, the FPD, their employees, agents or contractors under this Agreement, or as a result of any failure of any equipment which the City is required to maintain under the terms of this Agreement. The City's covenants and obligations under this indemnity provision shall survive any termination of this Agreement.

## **6. Dispute Resolution**

6.1 If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to arbitration, if required under A.R.S. § 12-1518, to litigation or to some other dispute resolution procedure. Mediation will be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, [www.cpradr.org](http://www.cpradr.org), with the exception of the mediator selection provisions. The parties shall select one or more mediators acceptable to each party. Each party agrees to bear its own costs in mediation.

6.2 The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This mediation provision is not intended to constitute a waiver of a party's right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if a party seeks provisional relief under the Arizona Rules of Civil Procedure.

## **7. Notices**

Unless otherwise specified in this Agreement, any notice or other communication required or permitted to be given shall be in writing and sent to the address given below for the party to be notified, or to such other address notice of which is given:

If to City:

Deputy City Manager  
City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

If to Highlands Fire District:

Mike Bradley, Chief  
Highlands Fire District  
568 Kona Trail  
Flagstaff, Arizona 86001

Copy to:

Chief of Police  
Flagstaff Police Department  
911 E. Sawmill Road  
Flagstaff, Arizona 86001

## **8. General Provisions**

8.1 Maintenance. Maintenance of the FPD dispatch center and all on-premise Public Safety Answering Point (PSAP) and radio equipment shall be the sole responsibility of the FPD.



8.2 Status of Employees. Employees of the respective parties shall not be considered employees or agents of the other, and the City and the District agree that they shall retain sole responsibility and authority over their respective employees.

8.3 Authorization to Contract. Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations under this Agreement and has taken all required acts or actions necessary to authorize the same.

8.4 Integration; Modification. Each party acknowledges and agrees that it has not relied upon any statements, representations, agreements or warranties, except as expressed in this Agreement, and that this Agreement constitutes the parties' entire agreement with respect to the matters addressed in this document. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded and merged in this Agreement. Except as to modifications to Attachment A to this Agreement as set forth in Section 3.3, this Agreement may be modified or amended only by written agreement signed by both parties and recorded by the County Recorder, and any modification or amendment will become effective on the date so specified.

8.5 Cancellation for Conflict of Interest. Pursuant to Arizona Revised Statutes Section 38-511, either the City or the District may cancel this Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of a party is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of the other party of the Agreement in any capacity or as a consultant to the other party of the Agreement with respect to the subject matter of this Agreement.

8.6 Waiver. No failure to enforce any condition or covenant of this Agreement will imply or constitute a waiver of the right of a party to insist upon performance of the condition or covenant, or of any other provision of this Agreement, nor will any waiver by either party of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach under this Agreement.

8.7 Compliance with Immigration Laws and Regulations. Pursuant to the provisions of A.R.S. §41-4401, each Party warrants to the Parties that the warranting Party and its subconsultants, if any, are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). The Parties acknowledge that a breach of this warranty by a Party or any of its subconsultants is a material breach of this IGA subject to penalties up to and including termination of this IGA or any subcontract. Each Party retains the legal right to inspect the papers of any employee of the other Parties or any subconsultant who works on this IGA to ensure compliance with this warranty.

8.7.1 A Party may conduct random verification of the employment records of the other Parties, and any of its subconsultants to ensure compliance with this warranty.

8.7.2 A Party will not consider the other Parties or any of their subconsultants in material breach of the foregoing warranty if the other Party and its subconsultants establish that they have complied with the employment verification provisions

prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

8.7.3 The provisions of this Article must be included in any contract a Party enters into with any and all of its subconsultants who provide services under this IGA or any subcontract. As used in this Section 5.10 "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

8.8 Prohibition of Doing Business with Sudan and Iran. Pursuant to A.R.S. §§35-391.06 and 35-393-06, each Party hereby certifies to the other Parties that the certifying Party does not have "scrutinized" business operations, as defined in A.R.S. §§35-391 and 35-393, in either Sudan or Iran. The Parties acknowledge that, in the event either of the certifications to a Party by the other Parties contained in this paragraph is determined to be false, this IGA may be terminated and the terminating Parties may exercise other remedies as provided by law, in accordance with A.R.S. §§35-391.06 and 35-393-06.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year written above.

**City of Flagstaff**

**Highlands Fire District**

\_\_\_\_\_  
Gerald W. Nabours, Mayor

\_\_\_\_\_  
Mike Bradley, Chief

Attest:

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

Approved as to form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
*Donna M. Am...* 6-1-12  
Attorney for District

**5. F.**

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Barney Helmick, Airport Director  
**Date:** 06/21/2012  
**Meeting Date:** 07/17/2012



---

**TITLE:**

**Consideration and Approval of Intergovernmental Agreement/Joint Project Agreement:**  
Airport Pavement Management Program System.

**RECOMMENDED ACTION:**

Approve the Intergovernmental Agreement/Joint Project Agreement with the State of Arizona Department of Transportation Aeronautics Division in the amount of \$453,060.80, plus a City match of \$50,340.20.

**Policy Decision or Reason for Action:**

Approving the Intergovernmental Agreement (IGA)/Joint Project Agreement (JPA) will allow the City and ADOT to improve and prolong the life of the taxiway and runway asphalts at Flagstaff Pulliam Airport. This program includes engineered recommendations for repairing and maintaining the asphalt to accepted Federal Aviation Administration (FAA) requirements.

**Financial Impact:**

The estimated cost of the Project is \$503,402. ADOT will contribute 90% of the Project cost at \$453,060.80. The City will contribute 10% of the Project cost at \$50,340.20 which is due and payable upon signing of the IGA/JPA. The City has budgeted \$51,000 (in account 270-3723-783-4103).

**Connection to Council Goal:**

Maintain and deliver quality, reliable infrastructure.

**Has There Been Previous Council Decision on This:**

Not on this specific issue. This IGA/JPA action is a new item before Council.

## **Options and Alternatives**

The FAA requires that public use airports that provide commercial air service maintain the infrastructure, including pavements maintained to required standards. This insures a level of safety for operators using airports. Without this IGA/JPA grant, the City would still be required to maintain this level of pavement management and pay full cost.

Another option would be to not maintain the pavement and risk FAA sanctions for pavement failures in the future.

## **Background/History:**

ADOT has in the past provided survey/engineering reports to participating airports with the option to each City/Airport to participate in an IGA/JPA to provide a Pavement Maintenance System Program (PMSP). This program was on hold for several years due to lack of funds. The State has made a commitment to support the PMSP at 90% with those Cities/Airports that participate with a 10% matching fund, leveraging our investment.

## **Key Considerations:**

Approval of the IGA/JPA commits ADOT to provide 90% of the funding over the life of the PMSP. The City will be obligated to cover 10% (\$50,340.20) of the cost of the program. The City will comply with all Federal, State, and Local regulations required for this funding.

## **Community Benefits and Considerations:**

The approval of this IGA/JPA will help the City with required maintenance of the aircraft movement areas of the Airport at a substantial reduced cost to the City. It will increase the life expectancy and maintain safe levels of operation for aircraft at Flagstaff Pulliam Airport. Keeping our airport maintained serves the economic health of the community by providing an additional mode of transportation into the City.

## **Community Involvement:**

The City has worked with ADOT contractors to survey the asphalt conditions covered in the PMSP. The City will assist the contractors that perform the required maintenance in the PMSP and assure the City gets the best quality possible.

## **Expanded Options and Alternatives:**

The maintenance identified in the PMSP survey is required by the Federal Aviation Administration (FAA) to comply with Certification to operate as a commercial service airport.

- Approve the IGA/JPA
- The City could choose to not participate in the ADOT PMSP and pay the entire cost to comply with FAA requirements.
- The City could also choose to not participate and not perform the required maintenance resulting in an increased risk to safety and the longevity of the Airport.

**Date of Council Approval:**

---

**Attachments:**     ADOT Airport Pavement Management System Program IGA/JPA 12-122

<b>MPD Agreement No</b>	<b>JPA 12-122</b>
<b>AG Contract No</b>	<b>P0012012001584</b>
<b>Project No</b>	<b>E3S1E</b>
<b>Project Description</b>	<b>ADOT Airport Pavement Management System Program Flagstaff Pulliam</b>
<b>Airport</b>	

**JOINT PROJECT AGREEMENT**  
BETWEEN  
THE STATE OF ARIZONA  
AND  
CITY OF FLAGSTAFF

THIS AGREEMENT JPA 12-122 is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, by and between the STATE OF ARIZONA acting by and through the ARIZONA DEPARTMENT OF TRANSPORTATION, herein referred to as the "STATE" and the CITY OF FLAGSTAFF, a political subdivision of the State of Arizona, herein referred to as the "SPONSOR". The State of Arizona, Arizona Department of Transportation and City of Flagstaff are collectively referred to as the "Parties", and individually as STATE, SPONSOR, and "Party".

**I. RECITALS**

1. The STATE is empowered by Arizona Revised Statutes Section 28-8202.D and 28-401.A to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the STATE.
2. The SPONSOR is empowered by Arizona Revised Statutes Section 28-8413 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the SPONSOR.
3. The STATE and SPONSOR desire to share in costs incident to pavement preservation at the Flagstaff Pulliam, hereinafter referred to as the Project. It is contemplated that this Project will be constructed by the STATE during STATE fiscal year 2013. The Project will include Crack Seal and Rubberized Asphalt Emulsion Seal Coat (TWAFG Sec 20 Sec 30, TWWFG Sec 10 Sec 20) Thin Asphalt Overlay/PFC (TWAFG Sec 10). The STATE will pay all engineering, construction administration, and construction costs during the Project.
4. The estimated cost of the Project is \$503,402. The SPONSOR shall contribute 10% of the Project cost. Payment of 10% of the estimated Project Cost (\$50,340.20) is due and payable upon signing this Agreement and must be received by the STATE at its Arizona Department of Transportation, Multimodal Planning Division before Notice to Proceed for construction will be issued.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

## **II. RESPONSIBILITIES**

### **1. The STATE shall:**

- a. Conduct investigations and prepare to FAA, State, or Local standards design plans, specifications and such other documents and services required for design, project coordination, construction bidding and construction.
- b. Advertise for Project bids and award one or more construction contracts for the Project, administer same, and make all payments to the contractor(s).
- c. Provide final inspection and acceptance of the Project.
- d. Subsequent to Project completion, determination of final quantities, and approval and acceptance of the Project, produce and submit to the SPONSOR a final accounting reconciliation of the Project costs. In the event that actual Project costs exceed the estimate, the STATE will invoice the SPONSOR for the remaining contribution required to equal 10% of the actual Project costs. In the event that the actual Project costs were less than the estimate, the STATE will reimburse the SPONSOR for any overpayment.
- e. Reimburse the SPONSOR for any contribution that exceeded 10% of the final Project costs within 30 days of submitting the final accounting reconciliation of the Project costs to the SPONSOR.

### **2. The SPONSOR shall:**

- a. Remit payment of 10% of the estimated Project cost of as documented in the Recitals of this Agreement to: Arizona Department of Transportation, Multimodal Planning Division Finance and Administration, Mail Drop 310B, 206 S. 17th Avenue, Phoenix, AZ 85007. Payment is due and payable upon signature of this Agreement and must be received by the STATE at its Arizona Department of Transportation, Multimodal Planning Division before notice to proceed for construction will be issued.
- b. Provide access to the Airport to the STATE, the STATE's representative, and the contractor for the purpose of preparing design plans and specifications for the Project, constructing the Project, and administering the construction of the Project.
- c. Coordinate with the STATE and approve safety plans, security plans, phasing plans, and construction schedules prepared by the STATE.
- d. Coordinate with airport users, issue NOTAM's as required, and provide operations support during construction, as needed.
- e. Remit to the STATE at its Arizona Department of Transportation, Multimodal Planning Division, the SPONSOR's contribution to the Project, based on the estimate provided, when submitting the signed copy of this Agreement for final execution.
- f. Upon completion and acceptance of the Project by the STATE, provide maintenance of the airport pavements improved with the Project.
- g. Shall abide by and enforce the SPONSOR Assurances incorporated herein as Exhibit A.

- h. Remit to the STATE at its Arizona Department of Transportation, Multimodal Planning Division within 30 days of receiving an invoice for any additional contribution required subsequent to the post-completion Project accounting cost reconciliation.

### **III. MISCELLANEOUS PROVISIONS**

1. This Agreement is governed according to the laws of the State of Arizona. All cited statutes, public law, executive orders, and policies cited in this Agreement are incorporated by reference as a part of this Agreement.
2. This Agreement shall become effective upon signature by the Parties hereto and shall remain in force and effect for a period not to exceed 90 days beyond Project completion; provided however, that this Agreement may be cancelled at any time prior to the commencement of performance under this Agreement, upon thirty (30) days written notice to the other Party.
3. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.
4. If the SPONSOR fails to comply with any of this Agreement, the STATE, by written notice to the SPONSOR, may suspend participation until appropriate corrective action has been taken by the SPONSOR.
5. The STATE reserves the right to terminate this Agreement in whole or in part due to failure of SPONSOR to carry out any term, promise, or condition of the Agreement. The STATE will issue a written notice to SPONSOR for failure to adequately perform, or if there is reason for the STATE to believe that the SPONSOR cannot or will not adequately perform the requirements of the Agreement. If SPONSOR does not submit a Corrective Action Plan to the satisfaction of the STATE within a ten (10) day period, then the STATE, by written notice to the SPONSOR, may terminate the Agreement in whole or in part. The notice of termination will contain the reasons for termination, the effective date, and costs incurred prior to termination. The SPONSOR shall reimburse the State any costs incurred prior to the date of termination.
6. When the continuation of the Project will not produce beneficial results commensurate with the further expenditure of funds, or when funds are not appropriated or are withdrawn for use hereunder, the STATE may terminate this Agreement. In the case where continuation of the Project will not produce beneficial results, the STATE and the SPONSOR shall mutually agree upon the termination either in whole or in part.
7. No waiver of any condition, requirement or right expressed in this Agreement shall be implied by any forbearance of the STATE to declare a default, to declare a failure to perform, or to take any other action on account of the violation, nor shall such violation be continued or repeated.
8. All parties shall comply with all applicable Federal, State and Local requirements including all applicable provisions of Title 14 (Aeronautics and Space Chapter I – Federal Aviation Administration, Department of Transportation) and Title 49 (United States Department of Transportation) and other applicable Codes of Federal Regulations where and when relevant.
9. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this Agreement.



10. In the event of any controversy which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.
11. This Agreement may be amended upon mutual Agreement of the Parties at any time when in the best interest of the STATE or SPONSOR.
12. Every payment obligation of the STATE under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the STATE at any time. No liability shall accrue to the STATE in the event this provision is exercised, and the STATE shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
13. All Parties shall retain all data, books, and other records relating to this Agreement for a period of five years after completion of the Agreement. All records shall be subject to inspection and audit by the STATE at reasonable times as set forth in A.R.S. 35-214, 49 CFR 18.26 and the requirements of OMB Circular A-133.
14. Each Party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

In addition, the STATE shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save and hold harmless City of Flagstaff, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the STATE's contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

15. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 USC. 12101-12213) and all applicable Federal regulations under the ACT, including 28 CFR Parts 34 and 36. SPONSOR shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, Arizona State Executive Order 2009-09, or A.R.S. 41-1461 through 1465, which mandates that all persons, regardless of race, color, religion, sex age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and

regulations, including the Americans With Disabilities Act. SPONSOR shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.

16. To the extent applicable under Arizona Revised Statutes Section 41-4401, each Party and its subcontractors warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under Arizona Revised Statutes Section 23-214(A). A breach of the above-mentioned warranty by any Party or its subcontractors shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the non-breaching Parties. Each Party retains the legal right to randomly inspect the papers and records of the other Parties or its subcontractor employees who work on the Agreement to ensure that the Parties or its subcontractors are complying with the above-mentioned warranty.
17. Pursuant to Arizona Revised Statutes Sections 35-391 and 35-393, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term “scrutinized business operations” shall have the meanings set forth in Arizona Revised Statutes Section 35-391 or 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.
18. Either Party has the right to terminate the Agreement, in whole or in part at any time, when in the best interests of the STATE and/or SPONSOR, without penalty or recourse.
19. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

**For Agreement Issues:**

	<b>Arizona Department of Transportation</b>	<b>City of Flagstaff</b>
<b>Contract Administrator</b>	Sally J. Palmer	Stacey Brechler-Knaggs
<b>Mailing Address</b>	Contracts Administrator Multimodal Planning Division Mail Drop 310B 206 S. 17 <sup>th</sup> Avenue Phoenix, AZ 85007	Grants Manager 211 West Aspen Avenue Flagstaff, AZ 86001
<b>Phone</b>	602-712-6732	9287797662
<b>Fax</b>	602-712-3046	
<b>Email</b>	<a href="mailto:spalmer@azdot.gov">spalmer@azdot.gov</a>	<a href="mailto:sknaggs@flagstaffaz.gov">sknaggs@flagstaffaz.gov</a>

**For Technical / Program Issues:**

	<b>Arizona Department of Transportation</b>	<b>City of Flagstaff</b>
<b>Project Manager</b>	Holly L. Hawkins, P.E.	Stacey Brechler-Knaggs
<b>Mailing Address</b>	State Airport Engineer MPD – Aeronautics Group Attn: APMS Mail Drop 426M 206 S. 17 <sup>th</sup> Avenue Phoenix, AZ 85007	Grants Manager 211 West Aspen Avenue Flagstaff, AZ 86001
<b>Phone</b>	602-712-8333	9287797662
<b>Fax</b>	602-712-3838	
<b>Email</b>	<a href="mailto:hhawkins@azdot.gov">hhawkins@azdot.gov</a>	<a href="mailto:sknaggs@flagstaffaz.gov">sknaggs@flagstaffaz.gov</a>

20. Attached hereto and incorporated herein is the written determination of each Party's legal counsel that the Parties are authorized under the laws of this STATE to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**City of Flagstaff**

**STATE OF ARIZONA  
Arizona Department of  
Transportation**

**By**

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**By**

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Joseph S. Omer, Director  
Multimodal Planning Division

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(Date)

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(Date)

## APPROVAL OF CITY OF FLAGSTAFF

I have reviewed the above referenced proposed joint partnering Agreement, between the STATE OF ARIZONA, ARIZONA DEPARTMENT OF TRANSPORTATION (STATE), and CITY OF FLAGSTAFF and declare this Agreement to be in proper form and within the powers and authority granted to CITY OF FLAGSTAFF under all applicable laws. No opinion is expressed as to the authority of the STATE to enter into this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012

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Attorney for City of Flagstaff



## **EXHIBIT A**

### **SPONSOR ASSURANCES**

These assurances will become a part of this Agreement. The SPONSOR hereby covenants and agrees with the STATE as follows:

- 1) That the Project is consistent with plans (existing at the time of approval of the Project) of public entities authorized by the STATE to plan for the development of the area surrounding the Airport.
- 2) That it will furnish to the STATE each quarter a current listing of all aircraft based on the Airport.
- 3) That these covenants shall become effective upon execution of this Agreement for the Project or any portion thereof, made by the STATE and shall constitute a part of the Agreement thus formed and shall remain in full force and effect throughout the useful life of the facilities developed under the Project, but not to exceed twenty (20) years.
- 4) That it is the owner or lessee of the property or properties on which the airport is located and that the lease guarantees that the SPONSOR has full control of the use of the property for a period of not less than twenty (20) years from the date of this Agreement. All changes in airport ownership or to an airport lease shall be approved by the STATE.
- 5) To restrict the use of land, adjacent to or in the immediate vicinity of the Airport, to activities and purposes compatible with normal Airport operations and to take appropriate action including the adoption of appropriate zoning laws.
- 6) To promote safe airport operations by clearing and protecting the approaches to the airport by removing, lowering, relocating, marking and/or lighting existing airport hazards and to prevent, to the extent possible, establishment or creation of future airport hazards.
- 7) To operate the Airport for the use and benefit of the public and to keep the Airport open to all types, kinds and classes of aeronautical use without discrimination between such types, kinds and classes; provided that the SPONSOR shall establish such fair, equal and nondiscriminatory conditions to be met by all users of the Airport as may be necessary for the safe and efficient operation of the Airport; and provided further, that the SPONSOR may prohibit any given type, kind or class of aeronautical use of the Airport if such use would create unsafe conditions, interfere with normal operation of aircraft, or cause damage or lead to the deterioration of the runway or other Airport facilities.
- 8) To suitably operate and maintain the Airport and all facilities thereon or connected therewith which are necessary for Airport purposes and to prohibit any activity thereon which would interfere with its use for aeronautical purposes and to operate essential facilities, including night lighting systems, when installed, in such manner as to assure their availability to all users of the Airport; provided that nothing contained herein shall be construed to require that the Airport be operated and maintained for aeronautical uses during temporary periods when snow, flood or other climatic conditions interfere substantially with such operation and maintenance.
- 9) To refrain from entering into any transaction which would deprive the SPONSOR of any of the rights and powers necessary to perform any or all of the covenants made herein, unless by such transaction the obligation to perform all such covenants is assumed by another public agency eligible to assume such obligations and having the power, authority and financial resources to carry out such obligations; and, if an arrangement is made for management or operation of the Airport by an agency or person other than the SPONSOR, the SPONSOR will reserve sufficient powers and authority to insure that the Airport will be operated and maintained in accordance with these covenants.
- 10) To maintain a current Airport Layout Plan (ALP) of the airport, which shows building areas and landing areas, indicating present and planned development and to furnish the STATE an updated ALP of the Airport as changes are made.

## 6. A.

### **CITY OF FLAGSTAFF STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Jessica Cortes, Deputy Court Administrator  
**Submitted For:** Don Jacobson, Court Administrator  
**Date:** 07/05/2012  
**Meeting Date:** 07/17/2012



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#### **TITLE:**

Consideration of Appointments: On Call Judges for the Flagstaff Municipal Court.

#### **RECOMMENDED ACTION:**

Appoint on-call judges as follows: Paul Christian, Gerald McCafferty, Tom Miller, Jennifer Nagel, Warren Sanford, Susan Slasor, and Sandra Wagner

#### **Policy Decision or Reason for Action:**

- Policy Decision or Reason for Action:
  - Appointment of all magistrates is required to be completed by Flagstaff City Council under both the City Charter and FCC **SECTION 1-15-001-0002(C)(1)**.

#### **Financial Impact:**

- All funding for on-call judges is included in the approved court budget.

#### **Connection to Council Goal:**

- Improving public safety by providing coordinated coverage for the Municipal Court with other courts within the county and provides for continuous coverage for all case types and filings.
- Effective Governance

**Has There Been Previous Council Decision on This:**

No.

**Options and Alternatives**

- Approve the appointments.
- Don't approve all or some of the appointments as recommended by the Presiding Judge and request additional candidates for Council consideration.
- Don't approve any appointments for On-Call judges. This would result in a significant impact on court operations, resulting in a shift of judicial resources to those types of hearings and events that have legal and time sensitive requirements. This would have a significant negative impact on revenues and service to the public. The efficacy of law enforcement would be undermined.

**Background/History:**

For numerous years we have been coordinating our initial appearance calendar with other courts in the areas to reduce duplication of effort and costs associated with jail time and transportation of prisoners. Recently, we have added the coordination of after hour search warrants as well. This provides law enforcement a single contact point to get search warrant approval when no court is open to provide it. Our On-Call judges have been a key to be able to provide these services.

**Key Considerations:**

- Appointment of On-Call judges allows for ongoing coverage of initial appearances as required by law within 24 hours following arrest (including weekends and holidays), provides for coverage for absences of other judges due to illness or planned absences and allows for additional operations to be performed as the court calendar allows.
- When an individual is arrested they can only be held for up to 24 hours before they must appear before a magistrate who will determine if there is probable cause for the arrest and set release conditions. Should they not appear in this time, they must be immediately released.

**Community Benefits and Considerations:**

Having On-Call judges perform our weekend and holiday initial appearances allows us the guarantee that those accused of a crime will have an appearance before a magistrate and have release conditions set in accordance to the violation charged.

**Community Involvement:**

None.

**Expanded Options and Alternatives:**



See Options on Page 1.

**Date of Council Approval:**

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**Attachments:**

**6. B.**

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Rick Tadder, Finance Director  
**Date:** 06/11/2012  
**Meeting Date:** 07/17/2012



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**TITLE:**

**Consideration and Adoption of Resolution No. 2012-27:** A resolution of the City Council of the City of Flagstaff authorizing signatures for checks and payment vouchers.

**RECOMMENDED ACTION:**

Read Resolution No. 2012-27 by title only.  
Adopt Resolution No. 2012-27.

**Policy Decision or Reason for Action:**

When the City experiences a change in staff related to current authorized signers for checks and payment vouchers, the City's bank requires a resolution to update authorized signatories.

**Financial Impact:**

None.

**Connection to Council Goal:**

Effective governance.

**Has There Been Previous Council Decision on This:**

Last change to authorized signers was Resolution 2012-03 at the February 9, 2012 meeting.

**Options and Alternatives**

- Approve Resolution 2012-27 as submitted.
- With consideration of internal controls,
  - Change, expand, or limit the authorized signatories.
  - Raise or lower the dollar threshold for two signatures.

### **Background/History:**

Recently we experienced a change to a positions that are authorized to sign checks and payment vouchers on behalf of the City. This resolution gives appropriate authority for our commercial banks to process revised signatory cards. The Citizens of the City of Flagstaff elected Jerry Nabours as Mayor and Council has appointed Coral Evans as Vice-Mayor.

The Mayor, Vice-Mayor, City Manager, Deputy City Managers, and the Management Services Director are the authorized signatories for the City of Flagstaff. Any one member of these designated positions is authorized to sign checks up to \$100,000 and any check over \$100,000 requires two signatures.

For the Court, the Presiding Magistrate has the authority to sign and appoint additional signers. Historically this has included the Magistrates, the Court Administrator, and the Deputy Court Administrators. Any one member of these designated positions is authorized to sign checks up to \$10,000, and two signatures are needed for checks over \$10,000. The Court's authority is to issue bond refund checks.

For the Flagstaff Housing Authority, the Executive Director, Maintenance Director, Director of Section 8, and Finance Director are the authorized signatories for the Flagstaff Housing Authority bank accounts. All checks require two signatures.

### **Key Considerations:**

Authority for signing checks must be placed with those in the organization that have the depth of understanding needed to understand the payment being processed, however they are far enough removed from the accounts payable/purchasing process to maintain adequate internal control.

### **Community Benefits and Considerations:**

The community is best served through the application of internal controls that dictate the separation of the duties to minimize the possibility of any fund misappropriation.

**Community Involvement:**

There was no community involvement.

**Date of Council Approval:**

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**Attachments:**    Resolution 2012-27

**RESOLUTION NO. 2012-27**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF  
AUTHORIZING SIGNATURES FOR CHECKS AND PAYMENT VOUCHERS.**

WHEREAS, the Wells Fargo Bank (Flagstaff Branch) has been designated the depository for the City of Flagstaff; and

WHEREAS, the bank requires a corporate resolution naming those persons authorized by the municipal corporation to sign checks drawn upon the account as may be used by the City of Flagstaff;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS  
FOLLOWS:**

SECTION 1. That Gerald W. Nabors, Coral Evans, Kevin Burke, G. Jerene Watson, Josh Copley, and Barbara Goodrich each be hereby authorized to sign checks drawn upon the general and payroll accounts of the above named bank for amounts up to \$100,000.00 and that any combination of two of the authorized signatures be required for checks in excess of \$100,000.00.

SECTION 2. That Thomas Chotena, Michael Araujo, Charlotte Beyal, Donald Jacobson, Jessica Cortes, and Cathy Harrison each be hereby authorized to sign checks drawn upon the Court account of the above mentioned bank for amounts up to \$10,000.00 and that any combination of two of the authorized signatures be required for checks in excess of \$10,000.00.

SECTION 3. That Michael A. Gouhin, Jose J. Dominguez, Ellen Ishii, and Deborah S. Beals each be hereby authorized to sign checks drawn upon the Flagstaff Housing Authority account of the above mentioned bank and that any combination of two of the authorized signatures be required for all checks issued.

SECTION 4. That the City Clerk of the City of Flagstaff is hereby authorized to certify the signatures of the above named individuals.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

**6. C.**

## **CITY OF FLAGSTAFF STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Malcolm Alter, Stormwater Program Manager  
**Date:** 06/20/2012  
**Meeting Date:** 07/17/2012



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### **TITLE:**

**Consideration of Resolution 2012-29:** A resolution of the City Council of the City of Flagstaff, Arizona, granting a public utility easement to Arizona Public Service Company at 1800 N. El Paso Flagstaff Road.

### **RECOMMENDED ACTION:**

Read Resolution No. 2012-29 by title only.  
Adopt Resolution No. 2012-29.

### **Policy Decision or Reason for Action:**

APS is in need of additional easement in order to replace an existing powerline with a newer, higher voltage line. The existing easement will increase in width by 10 feet.

The new powerline does have impacts to a portion of the Picture Canyon corridor. Specifically, the construction activities impact existing vegetation and facilities associated with the Picture Canyon Meander restoration Project as funded by the Arizona Water Protection Fund through a grant to the City. Construction also impacts the National Historic Registry Plaque and associated outdoor classroom.

APS has worked with the City and the Picture Canyon Core Group, that represents a variety of local jurisdictions, interest groups and experts, to develop a list of mitigations. This list is attached as exhibit C and has been agreed to by all involved parties.

### **Financial Impact:**

There are no financial impacts associated with the easement.

### **Connection to Council Goal:**

Maintain and deliver quality, reliable infrastructure.

**Has There Been Previous Council Decision on This:**

None.

**Options and Alternatives**

1. The City Council could choose to deny the request for additional easement area. This would have a negative effect on the utility's ability to reconstruct its powerline, which could in in turn affect the quality of service to

**Date of Council Approval:**

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**Attachments:**    APS Plans  
                          Res. 2012-29

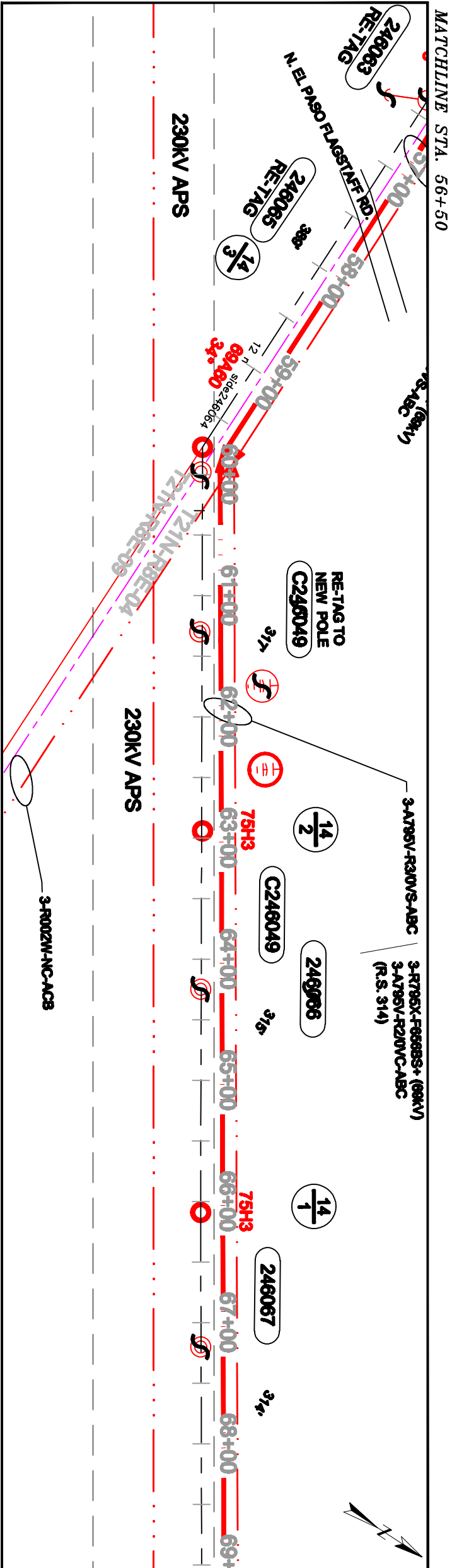
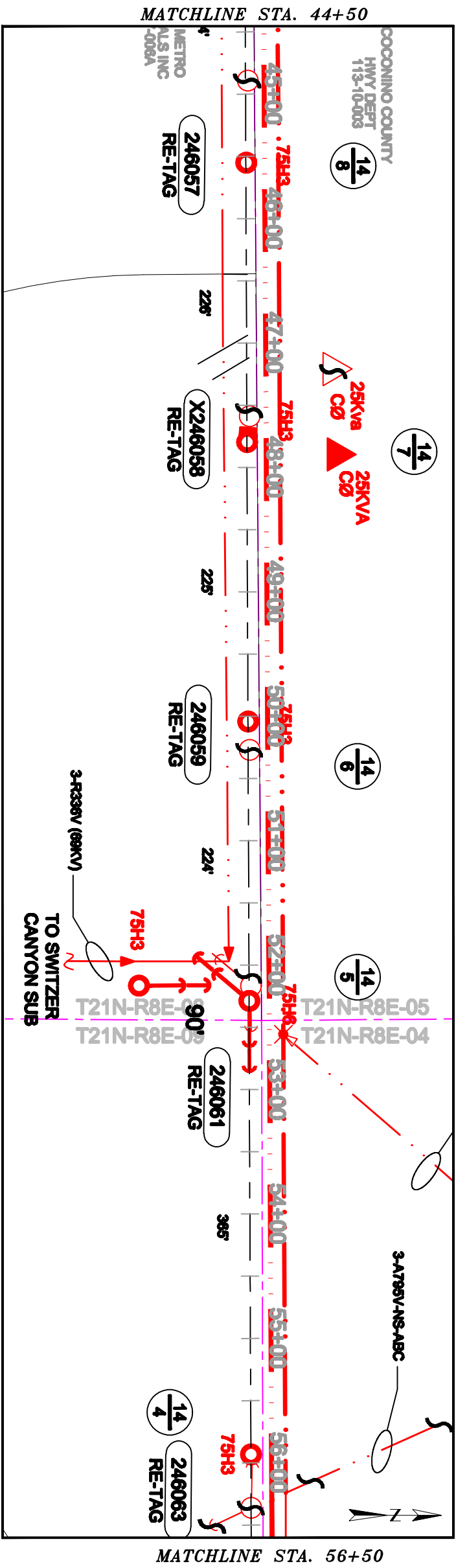




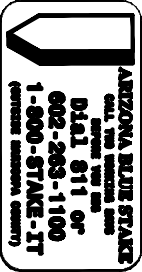


























MATCHLINE STA. 69+00  
END FOR CITY PERMIT



EXISTING EQUIPMENT	PROPOSED EQUIPMENT	DESCRIPTION
		-PADMOUNTED TRANSFORMER
		-SWITCHING CABINETS
		-OHUG CAPACITOR BANK
		-A-BOX / PULL BOX
		-OH TRANSFORMER
		-OH SWITCH (RFP)
		-APS OWNED WOOD POLE
		-APS OWNED STEEL POLE
		-APS OWNED JOINT USE POLE
		-DR (TRANSITION) POLE
		-EQUIPMENT TO TAG
		-REMOVAL

APS UTILITIES KEY		
EXISTING	PROPOSED	
 W	 W	WATER
 S	 S	SEWER
 G	 G	GAS
 SD	 SD	STORM DRAIN
 IRR	 IRR	IRRIGATION
 TS	 TS	TRAFFIC SIGNAL
 T	 T	TELE
 CATV	 CATV	CATV
 FO	 FO	FIBER
<hr/>		
UG ELECTRIC TRANSMISSION		
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UG ELECTRIC PRIMARY		
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UG ELECTRIC SEC/SVC		
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OH SEC./SVC.		
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DATA MODIFIED PER FIELD CONDITIONS		

DATA MODIFIED PER FIELD CONDITIONS	
CONTACT: R. GLEASON	
PHONE: 602-328-1128	PERMANIBLE: 602-263-3850
INSPECTOR:	
PHONE:	PERMANIBLE:
NO.	
DATE	
DESCRIPTION	
BY	
WOK: WA15147	
DATE: 1/11/12	
BY: R. GLEASON	
SCALE: 1:100	
FILENAME: WA115147.DWG	
SHEET 4 OF 4	

**APS** YOUNGS CANYON TO SANDING (69KV)  
FLAGSTAFF PERMIT

**RESOLUTION NO. 2012-29**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF,  
ARIZONA, GRANTING A PUBLIC UTILITY EASEMENT TO ARIZONA PUBLIC  
SERVICE COMPANY AT 2800 N. EL PASO FLAGSTAFF ROAD.**

WHEREAS, Arizona Public Service Company has requested that the City grant it a public utility easement over and across certain real property owned by the City of Flagstaff ; and

WHEREAS, the City of Flagstaff desires to grant said public utility easement to Arizona Public Service Company;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS  
FOLLOWS:**

SECTION 1. That the public utility easement, described in Exhibit 1, (the Easement Document), and made a part hereof by this reference, be and hereby is granted and approved without any warranty of title.

SECTION 2. That the public utility easement granted to Arizona Public Service shall be subject to all encumbrances, liens, limitations, restrictions and estates as exist on the land of which the easement is a part.

SECTION 3. That the City Manager be and hereby is authorized to execute any documents that may be necessary to carry out the provisions of this Resolution. All documents shall be in a form approved by the City Attorney.

SECTION 4. That City staff is hereby authorized to take such other and further measures and actions as are necessary and appropriate to carry out the terms, provisions, and intents of this Resolution, including, but not limited to, the recording in the Office of the Coconino County Recorder of the public utility easement in the form attached hereto.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

---

MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

**EXHIBIT 1**

SW-4-21N-8E  
113-06-002  
W496508  
RJJ  
Page 1 of 3

UTILITY EASEMENT

**THE CITY OF FLAGSTAFF, a Municipal corporation**, (hereinafter called "Grantor"), is the owner of the following described real property located in Coconino County, Arizona (hereinafter called "Grantor's Property"):

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Grantor, for and in consideration of One Dollar (\$1.00) and other valuable consideration, as outlined in Exhibit "C", receipt of which is hereby acknowledged, does hereby grant and convey to **ARIZONA PUBLIC SERVICE COMPANY**, an Arizona corporation, (hereinafter called "Grantee"), and to its successors and assigns, a non-exclusive right, privilege, and easement at locations and elevations, in, upon, over, under, through and across, a portion of Grantor's Property described as follows (herein called the "Easement Premises"):

SEE EXHIBITS "B" & "C" ATTACHED HERETO AND MADE A PART HEREOF

Grantee is hereby granted the right to: construct, reconstruct, replace, repair, operate and maintain electrical lines, together with appurtenant facilities and fixtures for use in connection therewith, for the transmission and distribution of electricity to, through, across, and beyond Grantor's Property; install, operate and maintain telecommunication wires, cables, conduits, fixtures and facilities incidental to supplying electricity or for Grantee's own use (said electrical and telecommunication lines, facilities and fixtures collectively herein called "Grantee Facilities"); utilize the Easement Premises for all other purposes connected therewith; and permit the installation of the wires, fixtures, conduits, or cables of any other company.

Grantee is hereby granted the right, but not the obligation, to trim, prune, cut, and clear away trees, brush, shrubs, or other vegetation on, or adjacent to, the Easement Premises whenever in Grantee's judgment the same shall be necessary for the convenient and safe exercise of the rights herein granted.

Grantee shall at all times have the right of full and free ingress and egress to and along the Easement Premises for the purposes herein specified.

Page 2 of 3

Grantor shall not locate, erect or construct, or permit to be located, erected or constructed, any building or other structure or drill any well within the limits of the Easement Premises; nor shall Grantor plant or permit to be planted any trees within the limits of the Easement Premises without the prior written consent of Grantee. However, Grantor reserves the right to use the Easement Premises for purposes that are not inconsistent with Grantee's easement rights herein conveyed and which do not interfere with or endanger any of the Grantee Facilities, including, without limitation, granting others the right to use all or portions of the Easement Premises for utility or roadway purposes and constructing improvements within the Easement Premises such as paving, sidewalks, landscaping, and curbing. Notwithstanding the foregoing, Grantor shall not have the right to lower by more than one foot or raise by more than two feet the surface grade of the Easement Premises, and in no event shall a change in the grade compromise Grantee's minimum cover requirements or interfere with Grantee's operation, maintenance or repair.

Grantee agrees that following any installation, excavation, maintenance, repair, or other work by Grantee within the Easement Premises, the affected area will be restored by Grantee to as close to original condition as is reasonably possible, at the expense of Grantee.

The easement granted herein shall not be deemed abandoned except upon Grantee's execution and recording of a formal instrument abandoning the easement.

The covenants and agreements herein set forth shall extend and inure in favor and to the benefit of, and shall be binding on the heirs, administrators, executors, successors in ownership and estate, assigns and lessees of Grantor and Grantee.

IN WITNESS WHEREOF, CITY OF FLAGSTAFF, a Municipal corporation, has caused this Utility Easement to be executed this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

CITY OF FLAGSTAFF, a Municipal corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
(Signature)



STATE OF ARIZONA     }  
                                      } ss.  
County of Coconino     }

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_  
by \_\_\_\_\_(Grantor).

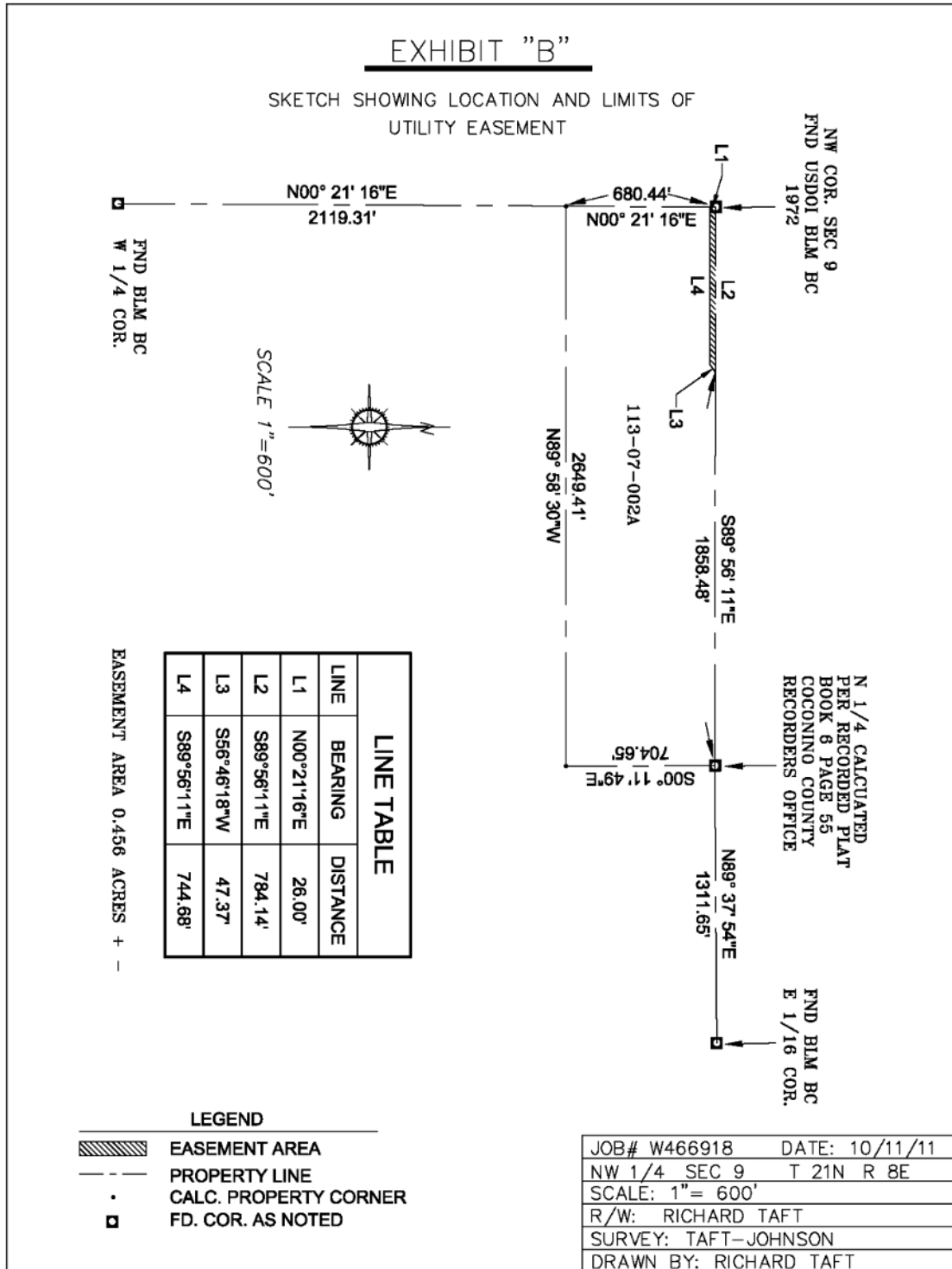
IN WITNESS WHEREOF I hereunto set my hand and official seal.

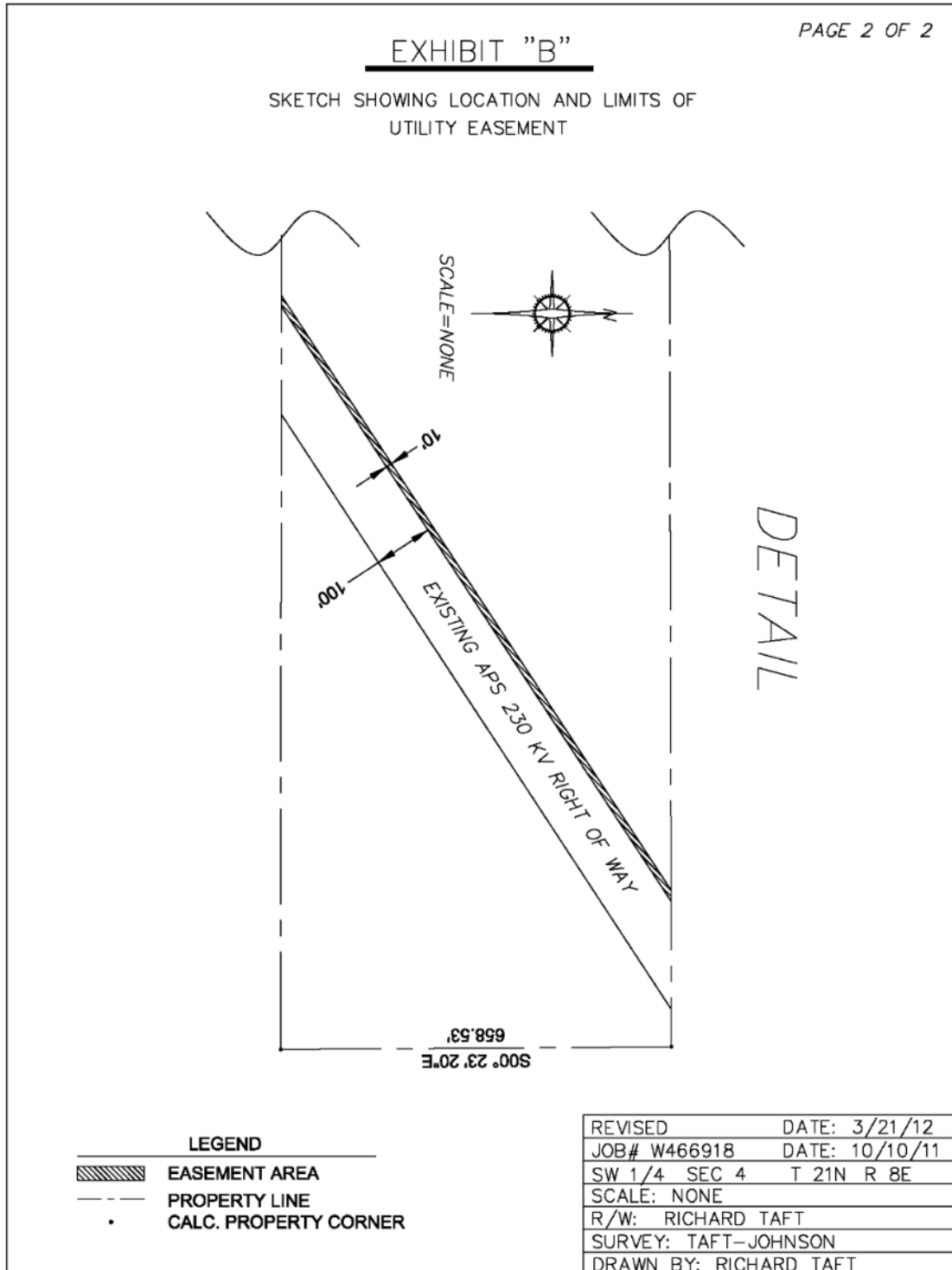
\_\_\_\_\_  
Notary Public in and for said County and State

**EXHIBIT "A"**

**(LEGAL DESCRIPTION OF GRANTOR'S PROPERTY)**

**The South half of the Southwest quarter of the Southwest quarter and the Southwest quarter of the Southeast quarter of the Southwest quarter of Section 4, Township 21 North, Range 8 East of the Gila and Salt River Meridian, Coconino County, Arizona.**





### Exhibit C

#### APS mitigation items for power line ROW expansion

- ◆ Mitigation Plan is included below.
- ◆ All disturbance areas (post construction) to be reseeded with approved seed mix (Mix design as approved by Natural Channels Design-Seed/seeding provided by APS)
  - Disturbance area on east side of Rio de Flag to be reseeded with native grass seed mix as well as native shrubs appropriate to power line right of way.
- ◆ Any damaged or destroyed plantings will be replaced with AWPf (Arizona Water Protection Fund) project approved plant materials
- ◆ Plaque and Education Area will be relocated and re-landscaped according to the description below.
- ◆ Removed trees to be replaced with new trees as per COF code (Zoning Code-replacement schedule for removed trees- Table 10-50.90.120.A: Tree Replacement is printed below for reference). Preliminary tree count as follows:

Picture Canyon Reach 1 PiPo removal diameters

DBH (cm)	DBH (in)	Notes
55.5	21.9	in grove at plaque
53	20.9	in grove at plaque
37	14.6	in grove at plaque
63.5	25.0	In grove at plaque; possible removal
53	20.9	
47	18.5	Possible removal; likely safe
60	23.6	inside fence
47.5	18.7	inside fence
*	*	Did not measure the double bole on south side of channel that will likely be reduced to single bole.

Plant trees corses along embankment near WCHWWTP. Exact location as determined by the City. Utilize existing irrigation line. APS to warranty trees until established.

- ◆ Signage placed on ROW to east of project area to discourage entrance by motorized vehicles.
- ◆ Rock barrier on FUTS alignment near the pond will be removed to allow access for construction and replaced with bollards (FUTS standard-detail contained within City Engineering Standards)
- ◆ If disturbed areas create additional weed problems, weed control may be required. Attached is the weed control monitoring plan that shall be followed in order to assess recurrent weeds.
- ◆ Remove and replace "sheep fence" as necessary.

- ◆ Save enough tops to spread on old road for obliteration (APS to stockpile for scout project-exact stockpile location to be determined by City)
- ◆ One small tree with top attached to be placed on toe of hill slope on east side of project for habitat/cover (leave fallen tree for cover).
- ◆ Remaining tops chipped and piled for use on Education area and new feeder trail from parking area (stockpile chips-exact location determined by the City).
- ◆ Larger material to be utilized for 'Wood for Warmth' (APS to stockpile cut trees-and place in a location to be determined on site as determined by the City).
- ◆ Replace floodplain tree with New Mexican Locust in vicinity shown on map. Appropriately outside of ROW
- ◆ APS forestry specialists will be included in the Picture Canyon long-term management plan review so that the impacted ROW area can be maintained from a vegetation perspective to everyone's satisfaction.
- ◆ City of Flagstaff shall provide inspections during mitigation activities and provide written approval of completed mitigation items.

### **Weed Control Monitoring Plan**

A major focus of the restoration project at Picture Canyon is the management of non-native invasive species within the flood plain and surrounding slopes. The area is being actively treated with through an integrated weed management plan developed as part of the Arizona Water Protection Fund Grant. Herbicide treatments are ongoing and the whole area has been planted with native grasses and forbs to compete against the non-native species. The treatment plan is working and the relative abundance of non-native species is declining. However, there is still an ongoing weed problem over much of the site.

A major concern with disturbance of the flood plain by construction vehicles is that the newly disturbed areas will be highly vulnerable to reinvasion by non-natives. These species include, scotch thistle, Russian thistle, horehound and Russian knapweed, and yellow star-thistle, which are all likely invaders to disturbed ground. Reseeding of disturbed areas will be beneficial, however the timing of precipitation and soil moisture

conditions can create a new wave of weed germination prior to establishment of seeded native materials and cause a serious setback to the goals of the restoration project.

Disturbed areas continue to be treated for regularly scheduled weed management activities during the course of the grant and will be monitored during the regular monitoring periods in accordance with the established monitoring plan. Plots within the disturbed areas (at least six, random 1-sq. meter plots) will be compared with random plots from undisturbed areas (Representative undisturbed areas will be identified prior to monitoring by NCD). If weed density and species composition in the disturbed areas are not comparable with plots outside the disturbed area at the end of two growing seasons after disturbance, APS will consult with the COF to plan and implement an appropriate treatment that helps COF meet its restoration goals.

### **Historic Plaque and Outdoor Classroom re-location narrative**

- **Outdoor Classroom site description:**

- Relocation area to use large flat boulders mainly from existing site to create tiered semi-circle seating area.

**Note:** excavation for first course to provide base for second tier.

- Similar dimensions of exiting site
- Utilize native plantings from APS forestry list to vegetate area and create buffer between El Paso plant and new location.
- Disturbed areas re-seeded
- Grade fill material at existing site to provide base for re-seeding and shrub plantings

- **National Register of Historic Places site description:**

- Relocation area to use basalt boulders from existing area and maintain similar topography.
- Similar dimensions of exiting site
- Area will be re-vegetated using native plantings
- Disturbed areas re-seeded
- Grade fill material at existing site to provide base for re-seeding and shrub plantings

**Note:**


1. COF will install temporary irrigation for plant establishment at both locations.
2. At APS discretion COF is available to work with APS contractor to design site plan and provide field directive to contractor as project moves forward.

3. COF and Picture Canyon work group are interested in work commencing before monsoon season and will be available to assist as needed.

**Table 10-50.90.120.A: Tree Replacement**

<b>Diameter of Tree Removed (Inches DBH)</b>	<b>Number of 2 ½-Inch Caliper Trees to be Planted</b>	<b>OR number of 4-Inch Caliper Trees to be Planted</b>
6 to 12	4	2
13 to 17	6	3
18 to 24	8	5
25 and over	15	8

Concurrence



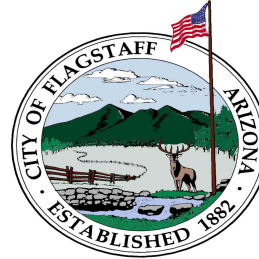
APS Representative



## 14. A.

### CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Karl Eberhard, Comm Design & Redevelopment Mgr  
**Date:** 06/25/2012  
**Meeting Date:** 07/17/2012



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#### TITLE:

**Consideration and Approval of Grant Agreement:** Route 66 Flagstaff Urban Trails System rest stop interpretive signage.

#### RECOMMENDED ACTION:

Approve the Grant Agreement with the National Park Service in the amount \$8,750.00.

#### Policy Decision or Reason for Action:

Grant monies are used to leverage local funds to deliver community projects. This project is jointly proposed by the two citizen commissions and matching funds are proposed to be provided from the Bed, Board, and Booze - Beautification funds.

Subsidiary Decisions Points: None

#### Financial Impact:

The total cost of the project is estimated to be \$20,000. The NPS grant will provide \$8,750 in cost-share funds, the City will provide \$11,250 in non-federal cash and in-kind contributions for the project.

This project has been budgeted as a part of the Bed, Board & Beverage (BBB) - Beautification Five-year Plan (Division 74), at \$20,000. Current estimates for the work suggest that the final cost will be less than the budgeted amount with the grant further reducing expenditures.

#### Connection to Council Goal:

Diversity of arts, culture and educational opportunities: This signage will celebrate the history of Route 66 in Flagstaff, a cultural icon of the community, educating residents and visitors alike about the road and its role in the development of the community. Such historic markers contribute to the economic vitality of Flagstaff, improve neighborhoods, and enhances a cultural amenity.

**Has There Been Previous Council Decision on This:**

No.

**Options and Alternatives**

Option 1 - Accept the Funds and proceed with the project

Option 2 - Do Not Accept the Funds and use BBB dollars solely

**Background/History:**

In 2006 the City of Flagstaff worked with the Arizona Department of Transportation to preserve a 770 foot segment of U.S. Route 66 during the realignment of existing U.S. Highway 89. The initial effort isolated this segment of historic Route 66 pavement from daily automobile traffic, arresting any further deterioration that would have otherwise occurred. This is the 1947 alignment of Route 66 that brought travelers west from Winona, Arizona to Walnut Canyon National Monument and into Flagstaff, Arizona. It was part of a post-World War II era rebuilding and re-alignment project to repair damages caused by military convoys of the war years and to shorten and make Route 66 safer for greater traffic volumes and higher speeds. This piece of U.S. Route 66 was constructed of reinforced Portland concrete during the summer of 1947. This alignment shifted Route 66 away from the older Camp Townsend-Winona Road/U.S. Highway 89 alignment that brought the highway to Flagstaff from just north and east of the site. This piece of highway carried all east and west bound Route 66 traffic until 1967, when I-40 was built south of Flagstaff as a bypass.

The preserved segment was incorporated into the Flagstaff Urban Trails System (FUTS), a city-wide network of non-motorized, shared-use pathways that are used by bicyclists, walkers, hikers, runners, and other users for both recreation and transportation. The roadway became the centerpiece of the FUTS rest area, created as a reminder of Route 66's former glory and contributions to Flagstaff's commerce. The rest area includes a ramada structure with table, designed to emulate the spirit of classic 1950s gas station canopy architecture, designated areas for community artwork (to be added at a future date), and provisions for interpretive signage envisioned to highlight Route 66 and its role in the community.

Recently, the Northern Arizona Centennial Fandango, represented by Ron Brewster, donated seven trees that were installed along with other new trees, boulders, and mulch. The modifications to the irrigation system and planting were performed by Parks staff.

**Key Considerations:**

As the FUTS Rest Stop was originally envisioned by the Beautification and Public Art Commission (BPAC), it included three public art installations and interpretive signage. The task of developing the signage was taken on by the Heritage Preservation Commission in conjunction with BPAC, the Arizona Route 66 Association, Sean Evans (NAU Cline Library), and the City of Flagstaff Historic Preservation Officer. The work to be accomplished is the design, construction, and installation of interpretive signage for the Route 66 FUTS rest area. Plans have been developed that outline the use of four types of interpretive signage, located throughout the rest area at strategic places (See Attachment 1).

**Community Benefits and Considerations:**

Receipt of this grant award indicates that the project captures national and international interest and attention. The available funds are quite limited and the National Park Service recognized the quality and appropriateness of this project in tourism, economic development, and heritage preservation. Route 66 tourists, now frequently from Europe and Asia, seek opportunities to embrace Route 66 and this facility acts as a welcome to international visitors and others to the Flagstaff destination. The addition of interpretive signage gives us an opportunity to share the Flagstaff story of Route 66.

**Community Involvement:**

The citizens of Flagstaff have been represented by the Heritage Preservation Commission and the Beautification and Public Art Commission, as well as through the involvement of key groups and individuals. These have included the Arizona Route 66 Association, Sean Evans (NAU Cline Library), and via their financial and resource contribution, the Northern Arizona Centennial Fandango Board and membership.

**Expanded Options and Alternatives:**

None.

**Date of Council Approval:**

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**Attachments:**    Route 66 Rest Area PPP  
                          Route 66 Grant Application  
                          Route 66 Rest Area Grant Agreement

# *Route 66 Rest Area Interpretive Signage*



***Heritage Preservation Commission  
Presentation to Beautification & Public Arts Commission  
March 2012***



# Interpretive Signage Working Group

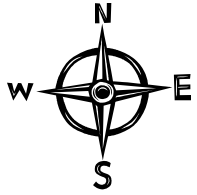
- Working Group
  - Karl Eberhard, City of Flagstaff Heritage Preservation Officer
  - Sean Evans, NAU Cline Library
  - Phil Scandura, Heritage Preservation Commission
- Task
  - To develop a proposal for interpretive signage for the Route 66 Rest Area. The intent of the signage is to highlight Route 66 and the role it played in the development of Flagstaff.



# Agenda

- Location Map
- Existing Signage
- Proposed Signage Placement
- Proposed Signage Style/Design
  - Historic Plaque
  - East & West Entry Signs
  - Roadside “Mini” Billboard
  - Burma Shave Signs
- Cost Estimates
- Plan Forward





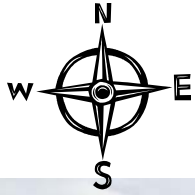
# Route 66 Rest Area Location Map



Rest Area Location







# Route 66 Rest Area Existing Signage



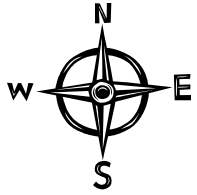
**East Entry  
(looking west)**



**Ramada and  
Picnic Area**







# Route 66 Rest Area Proposed Signage Placement

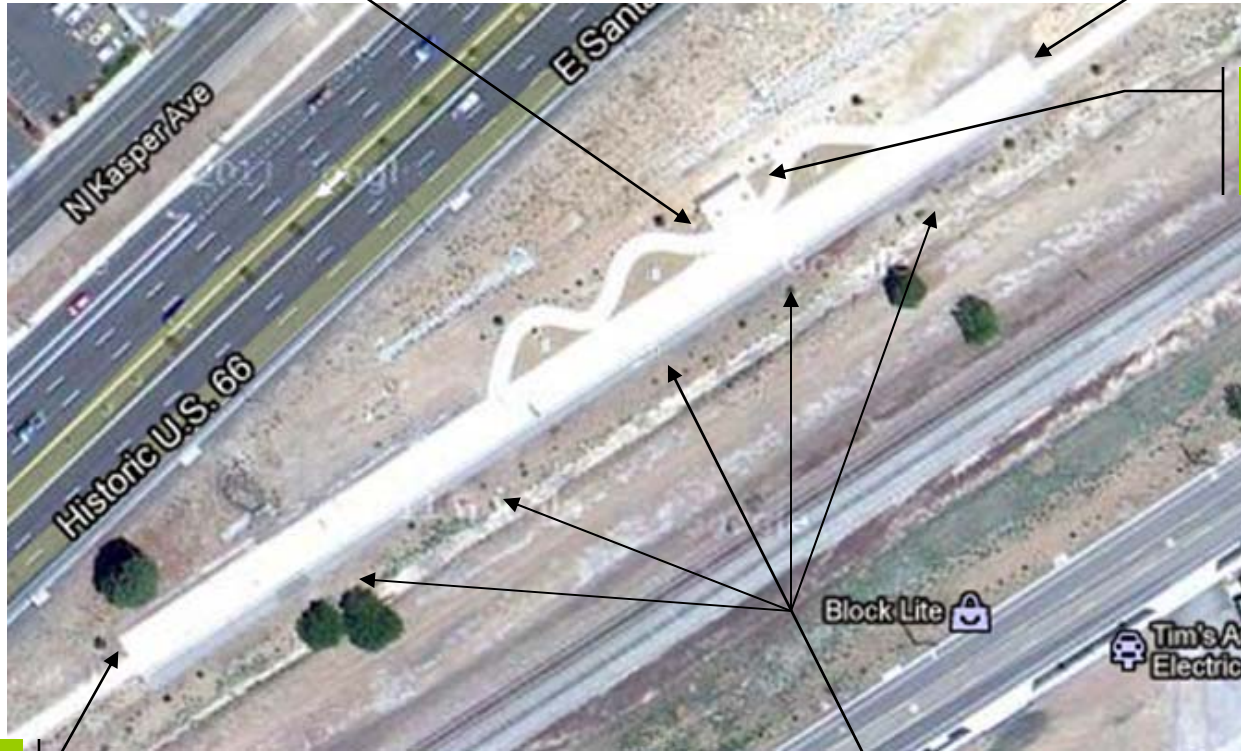
Historic Plaque

West Entry Sign

Roadside  
Billboard

East Entry Sign

"Burma Shave"  
Signs (2-sided)

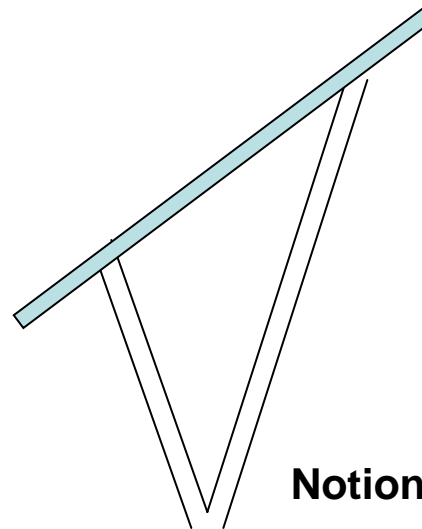


# Route 66 Rest Area Historic Plaque

- Overall historic significance
- Text with image or map
- 18" w x 24" h
- Different mounting options



Flagstaff Buffalo Park



Notional Side View



# Route 66 Rest Area

## Historic Plaque

- This 770' piece of U.S. Route 66 was constructed of reinforced Portland Concrete during the summer of 1947. This alignment shifted Route 66 away from the older Camp Townsend-Winona Road/U.S. Highway 89 alignment that brought the highway to Flagstaff from just north and east of here. This piece of highway carried all east and west bound Route 66 traffic until 1967, when I-40 was built south of Flagstaff as a bypass. The City of Flagstaff has preserved and incorporated this piece of Route 66 into the Flagstaff Urban Trail System and developed this rest stop as a reminder of this road's former glory and contribution to Flagstaff.

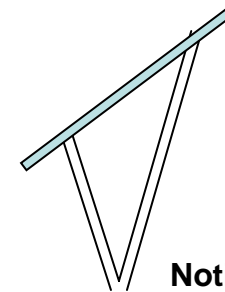




# Route 66 Rest Area

## East & West Entry Signs

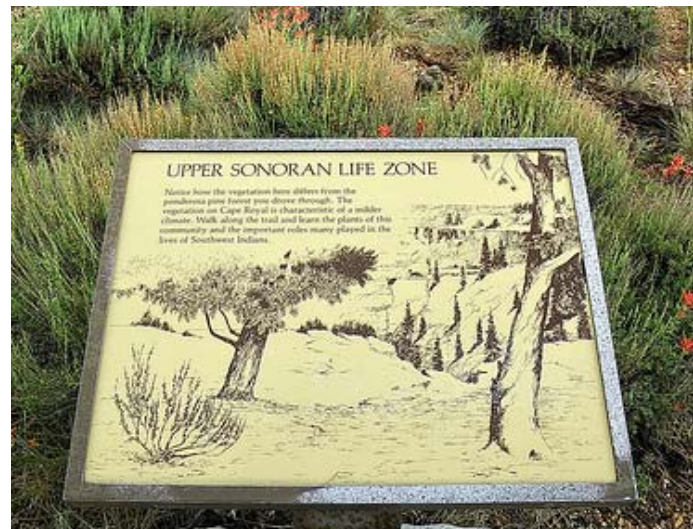
- Additional Route 66 information, tailored to the specific end of the Rest Area, e.g., leaving Flagstaff or entering Flagstaff
- Text over photo/graphic watermark
- Text with maps/photos



Notional Side View



High Pressure Laminate (HPL)



Etched Stainless



# Route 66 Rest Area

## East & West Entry Signs

- West Entry (heading toward Flagstaff along Route 66)
  - Heading west, Route 66 formed Flagstaff by creating the long commercial corridor that provided travelers with motels, auto repair, gas, entertainment and food, all with unique roadside architecture. Growth along this corridor was spurred by an entrepreneur's desire to be the first or last chance business for travelers entering or leaving town. Like many cities and towns on Route 66, the volume of traffic was a challenge for travelers and locals alike. In Flagstaff, Route 66 was widened to four lanes in the 1950s and 60s, and carried all of the highway's traffic until it was bypassed by I-40 in 1967.



# Route 66 Rest Area

## East & West Entry Signs

- East Entry (heading towards Flagstaff Mall on the FUTS)
  - Heading east, Route 66 enters a more rural environment wherein the road becomes one with the land it passes through. Unlike today's interstate highways, Route 66 rolled over the land, and reflected the terrain it was in. As a two-lane road, with unlimited access, it was a challenge to drive. Trucks, buses, tourists and roadside attractions meant that there was always traffic passing or turning along the route. All traffic between Chicago and Los Angeles passed this point, and witnessed the majesty of Flagstaff's mountain scenery.



# Route 66 Rest Area

## Roadside “Mini” Billboard

- Main signage for Rest Area
- In the style of a period Route 66 billboard
- 8' w x 4' h Panel on 1' h base
- Some examples...



An early, bow-legged Chico played a prominent role in the Santa Fe transcontinental train service in July 1950. It was located on North Huntington Drive.

“Custom”

; Santa Fe transcontinental train service in July 1950.



“Basic”





# Route 66 Rest Area

## Roadside “Mini” Billboard

- This is the 1947 alignment of Route 66 that brought travelers west from Winona to Walnut Canyon National Monument and into Flagstaff. It was part of a post-W.W.II era rebuilding and re-alignment project to repair damages caused by military convoys of the war years and to shorten and make Route 66 safer for greater traffic volumes and higher speeds. This alignment remained in use as part of U.S. 66 until 1967.
- Route 66 was created in November 1926 from combinations of local roads and highways to create an “all-weather” road connecting Chicago, Il. to Los Angeles, CA. In Arizona, paving of Route 66 was not completed until 1937. While there were ongoing changes made to Route 66, 1937 saw considerable changes to the road’s width, quality and alignment. More changes followed in 1947.
- The building of Interstate 40 across Arizona began the bypass era for many Arizona cities and towns. Holbrook was bypassed in 1980, Joseph City 1981, Winslow 1981, Flagstaff 1967, Williams 1985, Ash Fork 1981, Seligman 1978, Kingman 1981, Oatman 1952 and Yucca 1966. Route 66 was decommissioned as a federal highway in 1986.
- Today Route 66 lives on in the hearts of travelers who come from all across world to experience the highway that bore the traffic of the early automobile age; the mass migration of displaced farmers from the 1930s, and; the post-war travel era and was immortalized in popular music, novels and film.





# Route 66 Rest Area Burma Shave Signs

- Spaced for easy reading from bike or foot
- Non-Reflective
- Double-sided
  - One verse for westbound entering Flagstaff
  - Different verse for eastbound leaving Flagstaff
- 24" w x 8" h

<http://www.sff.net/people/teaston/burma.htm>



Heritage Preservation  
Commission will  
choose one of the  
following Options:

# Route 66 Rest Area Burma Shave Signs

## Westbound, entering Flagstaff

## Eastbound, leaving Flagstaff

### **Option A**

Driven all night?  
Need some rest?  
Stop off in Flagstaff  
It's the best!  
*Burma-Shave*

Glad you could visit  
Come see us again  
Flagstaff bids you well  
Happy travels 'til then  
*Burma-Shave*

### **Option B**

Food's great  
Shopping's fun  
Friendly folks  
Visit Flagstaff  
We're the one  
*Burma-Shave*

You ate  
You shopped  
Enjoyed your stay  
Safe travels to all  
Wherever you stray  
*Burma-Shave*

### **Option C**

Snow-capped peaks  
Whispering pines  
Room to roam  
You call it Flagstaff  
We call it home  
*Burma-Shave*

Go east young man  
And you'll go far  
Let the road  
Be your guide  
Don't forget your car  
*Burma-Shave*



# Route 66 Rest Area

## Cost Estimates

- Contacted Northern Arizona Signs (NOAZ)
- Worked with Phil Keesee to develop ***estimates***
- Totals shown include material/labor/design

Sign	Low End	High End
Historic Plaque (1)	<i>Aluminum</i> \$ 3,605	<i>Bronze</i> \$ 4,105
Entry Signs (2)	<i>HPL</i> \$ 6,505	<i>Etched Stainless</i> \$ 8,755
Roadside Billboard (1)	<i>Basic</i> \$ 3,790	<i>Custom</i> \$ 6,750
Burma Shave Signs (12)	<i>Basic 1-Color</i> \$ 2,515	<i>Full Color</i> \$ 3,115
<b>Total</b>	<b>\$ 16,415</b>	<b>\$ 22,725</b>

- Total cost of Rest Area to date: \$204k
- 10% Sign Budget ~ \$20k
- *We're in the ballpark!*



# Route 66 Rest Area Plan Forward

- Review/revise/approve design and wording
  - Heritage Preservation Commission voting on design/wording
  - Contacted *Personna American Safety Razor Company* to request permission to use Burma Shave trademark (waiting for response)
  - Investigate the addition of QR Codes to signs
- Determine Funding Sources
  - Applying for Route 66 Matching Grant Funds (application due April 6<sup>th</sup>)
  - Investigating Local Sponsorships (Findlay, Granny's, Galaxy Diner, Museum Club, etc.)
  - Approach Beautification & Public Arts Commission
- Secure Funding
- Go out for Bids
- Build & Install
- Dedication Party!



# Application Cover Sheet

**Project Name:** Route 66 Flagstaff Urban Trails System Rest Area Interpretive Signage

**Applicant Information:**

Organization/Agency City of Flagstaff, Arizona

Contact Name/Title: Karl Eberhard, AIA / Community Design and Redevelopment Manager, City Architect, Historic Preservation Officer

Secondary Contact: Stacey Brechler-Knaggs, Management Services Division, Grants Manager

Address Flagstaff City Hall, 211 West Aspen Ave, Flagstaff, AZ 86001

Phone (928) 213-2969 ; 928-213-2227

Email KEberhard@flagstaffaz.gov ; sknaggs@flagstaffaz.gov

**Applicant Type:**

City X State \_\_\_\_\_ Nonprofit Organization \_\_\_\_\_ Private \_\_\_\_\_  
County \_\_\_\_\_ Tribe \_\_\_\_\_ Educational Institution \_\_\_\_\_ Other (specify) \_\_\_\_\_

**Project Location (for preservation, rehabilitation and restoration projects only):**

Property Address Route 66 at U.S. Highway 89, Flagstaff, Arizona

County in which property resides Coconino County, Arizona

**Project Area: Congressional Representation:**

U.S. Representative(s) Gosar, Paul (Rep), First District Arizona

U.S. Senators Kyl, Jon (Rep); McCain, John (Rep)

**Project Cost (in dollar amounts):**

NPS Grant Request	Applicant Cost-Share	Total (grant + cost-share)
\$10,000	\$10,000	\$20,000

**Applicant signature certifies that the information contained within this application is true and correct** (original signature required on a minimum of one copy):

Kevin Burke, City Manager, City of Flagstaff

**Applicant Name and Title** (print or type)

\_\_\_\_\_  
**Applicant** (signature)

**Submit to:** Route 66 Corridor Preservation Program  
National Park Service  
P.O. Box 728  
Santa Fe, NM 87504

Physical address:  
1100 Old Santa Fe Trail  
Santa Fe, NM 87505

# Project Proposal - Instructions

**PART I - Please provide a description of the proposed project by addressing the topics below.**

## **1) Statement of Project Need, Purpose, Goals, and Potential Public Benefit**

*State the demonstrated need and purpose of the proposed project; the benefit or contribution the project will make to the overall goal of preserving or commemorating the history of Route 66; and how the project will achieve this. What is the intended use of the property or project results? Will the completed project be accessible to the public? Will it benefit the local economy? If so, state how. Include business plans, if applicable. Response should not exceed two typed 8-1/2 x 11 pages (12 point font)*

In 2006 the City of Flagstaff worked with the Arizona Department of Transportation to preserve a 770' segment of U.S. Route 66 during the realignment of existing U.S. Highway 89. The initial effort isolated this segment of historic Route 66 pavement from daily automobile traffic, arresting any further deterioration that would have otherwise occurred. Later, the segment was incorporated into the Flagstaff Urban Trails System (FUTS), a city-wide network of non-motorized, shared-use pathways that are used by bicyclists, walkers, hikers, runners, and other users for both recreation and transportation.

The roadway became the centerpiece of the FUTS rest area, created as a reminder of Route 66's former glory and contributions to Flagstaff. The rest area includes a ramada structure with table, designed to emulate the spirit of classic 1950s gas station canopy architecture, designated areas for community artwork (to be added at a future date), and provisions for interpretive signage envisioned to highlight Route 66 and its role in the community.

The intent of this grant application is to secure funding to support the design, construction, and installation of this interpretive signage, as allowed under *Eligible Project, Type 2 - Planning, Research, Interpretive, or Educational Outreach Projects*.

## **2) History and Description of Historic Property (If applicable - other projects skip to Question 4)**

*Please describe the property's history including construction, ownership, and use, providing dates whenever possible. Describe how the property has changed over time. Provide description of current ownership, use, and condition of property. Response should not exceed two typed 8-1/2 x 11 pages (12-point font)*

This is the 1947 alignment of Route 66 that brought travelers west from Winona, Arizona to Walnut Canyon National Monument and into Flagstaff, Arizona. It was part of a post-W.W.II era rebuilding and re-alignment project to repair damages caused by military convoys of the war years and to shorten and make Route 66 safer for greater traffic volumes and higher speeds.

This 770' piece of U.S. Route 66 was constructed of reinforced Portland Concrete during the summer of 1947. This alignment shifted Route 66 away from the older Camp Townsend-Winona Road/U.S. Highway 89 alignment that brought the highway to Flagstaff from just north and east of here. This piece of highway carried all east and west bound Route 66 traffic until 1967, when I-40 was built south of Flagstaff as a bypass.

## **3) Significance of Historic Property (If applicable - other projects skip to Question 4)**

*Is the property listed on a state historic register, the National Register of Historic Places, or determined eligible for listing on a historic register by a State Historic Preservation Office? If so, please provide a copy of the register nomination form, or a written determination of eligibility from the State Historic Preservation Office. If not, please describe the length of association and significance of the property to the historic period of Route 66 (1926-1970). Response should not exceed one typed 8-1/2 x 11 page, excluding nomination forms (12-point font)*

Heading west, Route 66 formed Flagstaff by creating the long commercial corridor that provided travelers with motels, auto repair, gas, entertainment, and food, all with unique roadside

architecture. Growth along this corridor was spurred by an entrepreneur's desire to be the first or last chance business for travelers entering or leaving town. Like many cities and towns on Route 66, the volume of traffic was a challenge for travelers and locals alike. In Flagstaff, Route 66 was widened to four lanes in the 1950s and 60s, and carried all of the highway's traffic until it was bypassed by I-40 in 1967.

Heading east, Route 66 enters a more rural environment wherein the road becomes one with the land it passes through. Unlike today's interstate highways, Route 66 rolled over the land, and reflected the terrain it was in. As a two-lane road, with unlimited access, it was a challenge to drive. Trucks, buses, tourists, and roadside attractions meant that there was always traffic passing or turning along the route. All traffic between Chicago and Los Angeles passed this point, and witnessed the majesty of Flagstaff's mountain scenery.

Route 66 was created in November 1926 from combinations of local roads and highways to create an "all-weather" road connecting Chicago, IL to Los Angeles, CA. In Arizona, paving of Route 66 was not completed until 1937. While there were ongoing changes made to Route 66, 1937 saw considerable changes to the road's width, quality, and alignment. More changes followed in 1947.

The building of Interstate 40 across Arizona began the bypass era for many Arizona cities and towns. Holbrook was bypassed in 1980, Joseph City 1981, Winslow 1981, Flagstaff 1967, Williams 1985, Ash Fork 1981, Seligman 1978, Kingman 1981, Oatman 1952 and Yucca 1966. Route 66 was decommissioned as a federal highway in 1986.

Today Route 66 lives on in the hearts of travelers who come from all across the world to experience the highway that bore the traffic of the early automobile age; the mass migration of displaced farmers from the 1930s, and; the post-war travel era and is immortalized in popular music, novels, and film.

#### 4) Project Description and Project Budget

**Part One:** *Provide a clear, concise description of the specific work to be accomplished. If specific plans (design or construction documents, etc.) have not been developed, explain your plan for having them developed. Page allotment for response will depend on the scope and complexity of the project.*

The work to be accomplished is the design, construction, and installation of interpretive signage for the Route 66 FUTS rest area. The intent of the signage is to educate the public on the history of Route 66 and the role it played in the development of Flagstaff.

Plans have been developed that outline the use of four types of interpretive signage, located throughout the rest area at strategic places. Included in "Part II, Attachments" are maps showing the location of the rest area in Flagstaff, and the intended placement of signage throughout the rest area. Also included are example photos of the types of signage to be installed.

The development of the content for each sign (i.e., text and/or graphics) is being provided by the City of Flagstaff's Heritage Preservation Commission, in partnership with research provided by the Cline Library at Northern Arizona University (see item 5, Project Team).

**Part Two:** *Develop a Task Timeline and Budget table, using the headings below as a guide. List and describe each individual task to be performed including the timeframe for implementation, cost, and funding source for each task. The task descriptions should be sufficiently detailed to give a clear understanding of the general flow of work necessary to complete the project. At the end of the table, tally total NPS, cash, and in-kind contributions, as well as total project cost.*

**NOTE –** *Timeline should include 45 days for Section 106 review for preservation, restoration, and rehabilitation projects. Please use the following headings as a guide for developing the table (additional headings may be included as needed):*

**Table 1 - Task Timeline and Budget**

Task Description <sup>1</sup>	Task Timeline	Task Budget <sup>2</sup>	NPS Contribution (\$ amount)	Applicant Cash Contribution (\$ amount)	Applicant In-Kind Contribution (Service/Item Description)	Source of Cash or In-Kind Contribution
Historic Plaque (quantity 1)	Note 3	\$4,000	\$2,000	\$2,000		BBB Tax - Beautification
East & West Entry Signs (quantity 2)	Note 3	\$9,000	\$4,500	\$4,500		BBB Tax - Beautification
Roadside "Mini" Billboard (quantity 1)	Note 3	\$4,500	\$2,250	\$2,250		BBB Tax - Beautification
Burma Shave Signs (quantity 6 doubled-sided)	Note 3	\$2,500	\$1,250	\$1,250		BBB Tax - Beautification
Totals		\$20,000.00	\$10,000.00	\$10,000.00		

Note 1: Each task entry includes the design, construction, and installation.

Note 2: Budgetary amounts are based on estimates developed in collaboration with a prominent local sign company.

Note 3: All signage should be completed no later than 6 months from receipt of grant funding (weather permitting).

## 5) Project Team

*Please provide information on each member of the Project Team, including contractors and subcontractors. Describe the role and qualifications of each member, including a brief profile or resume, if applicable. The page allotment for response will depend on the number of project team members.*

- City of Flagstaff, Heritage Preservation Commission. Consists of seven Council-appointed citizens, tasked with locating sites of historic interest in the City, advising the City Council on all matters relating to historic preservation, and reviewing development projects in the City's historic districts. At least two members must be professionals in the areas of architecture, history, architectural history, planning, or archaeology; at least two members must be owners of locally designated historic properties or properties listed on the National Register of Historic Places; and at least three members must be from the general community.
- City of Flagstaff, Historic Preservation Officer. Karl Eberhard (contact information provided on application coversheet).
- Management Services Division. Grants Management and Accounting
- R. Sean Evans, Archivist with Special Collections and Archives, Cline Library at Northern Arizona University
- The Contractor will be competitively selected via the standard purchasing process of the City of Flagstaff.

## 6) Funding Considerations

*Applicants must demonstrate how the required minimum 1:1 match will be provided. Non-federal funds and/or in-kind contributions (e.g. donated services, materials, and equipment) may be used to meet this requirement. Please list all sponsors, donors, etc., here or in Section #4, Task Budget. Response should not exceed one typed 8-1/2 x 11 page (12-point font)*

City of Flagstaff Bed, Board, and Beverage Tax (Beautification portion) funding will be used.

## 7) Project Completion and Ongoing Project Maintenance

*What financial and other plans exist for the maintenance and continued support of the project results? If the proposed project is part of a multi-phase or long-term project, explain how and when the additional phases will be financed and completed. Response should not exceed one typed 8-1/2 x 11 page (12-point font)*

City of Flagstaff Bed, Board, and Beverage Tax (Beautification portion) funding will provide for on-going maintenance, as required.



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## **PART II - Attachments**

- 1) Three Letters of Recommendation (for example, community members/leaders; Chambers of Commerce; Scenic Byway programs; Route 66 associations; historical societies; nonprofit organizations; State Historic Preservation Office; and/or state/federal legislators).
- 2) Project Graphics (if applicable):
  - Labeled photographs (digital printouts and/or color photocopies):
    - historic images of property, if available
    - current images of property
    - current images of property showing details of existing conditions
  - Map showing property location and physical address.
  - Drawings of existing conditions and work proposed, prepared by a registered historical architect or other related professional. If drawings have not yet been created, their production may be included as part of the project proposal.
- 3) State or National Register of Historic Places nomination forms, or statement of eligibility from State Historic Preservation Office (if applicable).
- 4) Property Protection and Maintenance Agreement – see attached (for preservation, restoration, and rehabilitation projects only).
- 5) Laws and Standards Agreement – see attached (for preservation, restoration, and rehabilitation projects only).

## Property Maintenance and Protection Agreement (for preservation, rehabilitation, and restoration projects only)

I/we, \_\_\_\_\_, owner of the property known as \_\_\_\_\_, agree that if funds from the National Park Service Route 66 Corridor Preservation Program are used towards the preservation, restoration, or rehabilitation of the property, I/we will ensure that the property is maintained and kept in a state of good repair for no less than 10 years after the project work is completed. This will be done in order to preserve the historical and architectural integrity of the property in its improved condition, and to protect the investment of public federal funds.

If I/we are personally unable to maintain the property, I/we will ensure that another entity assumes these responsibilities.

If I/we must sell the property, I/we will encourage the new owner to continue the care and protection of the property.

\_\_\_\_\_  
Name of Owner  
Date

**Not Applicable**

\_\_\_\_\_  
Property Name

## Laws and Standards Agreement

(for preservation, rehabilitation, and restoration projects only)

I/we, \_\_\_\_\_, if awarded a cost-share grant from the National Park Service Route 66 Corridor Preservation Program for the project known as

\_\_\_\_\_, agree to comply with laws and standards set forth in the Secretary of the Interior's *Standards for Treatment of Historic Properties*; Section 106 of the National Historic Preservation Act again, as amended; Occupational Health and Safety Administration Regulations; and all appropriate local and state building codes.

If awarded a cost-share grant, I will ensure that the project is implemented in compliance with these laws and standards, and provide documentation and reporting of this compliance as specified in the final award contract.

\_\_\_\_\_  
Name of Owner  
Date

\_\_\_\_\_  
Project Name

**Not Applicable**

## Application Checklist

Applications must include the items listed below, as specified in the Cost-Share Grant Guidelines and Application materials. Please use the boxes to show that the application is complete, and include this sheet with your application.

**Project Title:** Route 66 Flagstaff Urban Trails System Rest Area Interpretive Signage

Five (5) copies each of:



**1. Application Cover Sheet**



**2. Project Proposal**



**4. Attachments**

- Letters of Recommendation
- Graphics (if applicable)
- State/National Register of Historic Places Nomination Forms (if applicable)
- Signed Property Maintenance and Protection Agreement (preservation, restoration, and rehabilitation projects only)
- Signed Laws and Standards Agreement (preservation, restoration, and rehabilitation projects only)

**UNITED STATES DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE**

**Applicant Name**

City of Flagstaff

**Grant Number**

P12AP10716

**Administering Agency**

National Park Service, National Trails Office – Santa Fe

**Grant Title**

Route 66 Flagstaff Urban Trails System Rest Area Interpretive Signage

**Grant Type**

Discretionary

**Proposal Scope:**

To implement subsection 2(d) (3) of the Act of August 10, 1999 (Route 66 Corridor Historic Preservation Act), Public Law 106-45, 113 Stat. 224, the National Park Service has allocated \$8,750.00 from the FY 2012 National Park Service Cost Share Grant Program to pay for the Federal share of the costs for the work as described in the attached Scope of Work .

<b>Grant Cost:</b>	<b>\$ 17,500.00</b>
<b>Total Cost</b>	<b>\$ 17,500.00</b>
<b>NPS Amount</b>	<b>\$ 8,750.00</b>
<b>Local Match</b>	<b>\$ <u>8,750.00</u></b>
<b>Other</b>	<b>\$ _____</b>

The following are hereby incorporated into this Grant:

1. Scope of Work
2. Standard Form 270
3. Standard Form 424
4. Davis-Bacon Wage Determination No. AZ20100013
5. Employee Rights under the Davis Bacon Act poster
6. Payroll form

Terms and Conditions:

1. **TERM OF GRANT:** From date of final signature until December 31, 2013. **NOTE TO THE GRANTEE: TO AVOID POSSIBLE LOSS OR CANCELLATION OF FUNDING UNDER THIS GRANT, THE NATIONAL PARK SERVICE STRONGLY ENCOURAGES THAT THE PROJECT BE COMPLETED BY THE END OF THE ABOVE STATED TERM OF THIS GRANT. REQUESTS FOR EXTENSIONS OF TIME ARE STRONGLY DISCOURAGED AND WILL BE APPROVED ON A CASE BY CASE BASIS ONLY. IF AN EXTENSION OF TIME IS REQUIRED, ALL REQUESTS MUST BE IN WRITING AND SENT TO THE CONTRACTING OFFICER ALONG WITH A COMPLETE EXPLANATION FOR THE REQUEST.**
2. **KEY OFFICIALS:** Key officials for the National Park Service are:  

Technical:  Kaisa Barthuli National Park Service P.O. Box 728 Santa Fe, NM 87504 505-988-6027	Administrative/Signatory:  Trish Fresquez-Hernandez, Contracting Officer National Park Service P.O. Box 728 Santa Fe, NM 87504 505-988-6122
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3. **MODIFICATION AND TERMINATION:** This Grant may be modified only by a written instrument executed by both parties.  
  
Either party may terminate this Grant by providing the other party with thirty (30) days advance written notice. In the event that one party provides the other party with notice of its intention to terminate, the parties will meet promptly to discuss the reasons for the notice and to try to resolve their differences.
4. **REPORTS AND DELIVERABLES:** See attached scope of work.
5. **AWARD AND PAYMENT:** A Standard Form 270, Request for Advance or Reimbursement, must be submitted for payment to:  
  
Carol Ortega - NTIR  
National Park Service  
P. O. Box 728  
Santa Fe, NM 87504  
  
Payment will be made by Electronic Funds Transfer into the Grantee's bank account as entered in the Central Contractor's Registration (CCR). ADVANCE PAYMENT OF FUNDS IS NOT AUTHORIZED. PAYMENTS WILL BE MADE ON A REIMBURSEABLE BASIS ONLY.
6. **INDEMNIFICATION:** Grantee will indemnify and hold harmless the United States from any and all liability arising out of the use of funds transferred to the Grantee under this Agreement.
7. The United States will not be a party to any contract entered into by the Grantee for the performance of the work funded by this Grant.

In witness whereof, the parties hereto have executed this agreement as of the date entered below.

NATIONAL PARK SERVICE

GRANTEE

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
Contracting Officer

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

**Route 66 Corridor Preservation Program  
Cost-Share Grant  
Scope of Work**

**Project Title:** Route 66 Flagstaff Rest Area Interpretive Signage

**NPS Grant Award:** \$8,750

**Cost-Share Match:** \$8,750 (est.)

**Grant ID Number:** P12AP10716

**DUNS Number:** 088302625

**Grantee/Fiscal Agent:**

City of Flagstaff  
Flagstaff City Hall  
211 West Aspen Ave.  
Flagstaff, AZ 86001

Telephone: 928-213-2969, 928-213-2227

Email: [keberhard@flagstaff.gov](mailto:keberhard@flagstaff.gov), [sknaggs@flagstaffaz.gov](mailto:sknaggs@flagstaffaz.gov)

**Grantor:**

Route 66 Corridor Preservation Program  
National Trails Intermountain Region  
National Park Service  
P.O. Box 728  
Santa Fe, NM 87504

Telephone: 505-988-6701

Fax: 505-986-5214

Email: [kaisa\\_barthuli@nps.gov](mailto:kaisa_barthuli@nps.gov)

**Scope of Work**

The City of Flagstaff, owner of the Route 66 Urban Trails System Rest Area (FUTS) at Route 66 and US 89 in Flagstaff, Arizona, will administer a project to design, construct, and install interpretive signage for the Route 66 FUTS rest area. The proposed work consists of the design, construction, and installation of the following:

1. Historic plaque

2. East and West entry signs
3. Roadside mini billboard
4. Burma Shave signs

NPS funds will assist with the historic plaque, East and West entry signs, and the mini billboard (#1-3).

The Burma Shave (non-interpretive) signs (#4) are not an eligible grant activity, but may be included in the overall project as part of the City's cost-share match.

Interpretive panel content and design will be presented to NPS for review and approval prior to fabrication and installation (see Project Task Schedule).

Changes to the work plan may occur due to unforeseen project circumstances. These changes must be discussed with NPS and documented in writing before they occur.

### **Award and Payment**

The total cost of the project is estimated to be **\$17,500**. The NPS will provide **\$8,750** in cost-share funds to assist with project expenditures. The grantee is responsible for securing and documenting a minimum of **\$8,750** in non-federal cash and in-kind contributions.

Project overruns will be the responsibility of the grantee. **No additional NPS funds may be granted for project costs that exceed the amounts projected in this Scope of Work.**

NPS grant funds are paid on a reimbursable basis only. To request reimbursement, the grantee will submit to the NPS Standard Form 270, "Request for Advance or Reimbursement," as well as an itemized invoice or breakdown sheet showing costs in each budgetary item. The Grant ID Number should be cited on all documents. Each SF-270 and invoice/breakdown sheet shall be addressed to:

National Park Service  
ATTN: Carol Ortega – ACG  
P. O. Box 728  
Santa Fe, NM 87504-0728

Once a SF-270 form is received by the NPS, payments are typically made within 4-6 weeks via electronic transfer to a bank account specified by the grantee Central Contractors Register (CCR).



## Completion Report and/or Other Deliverables

Completion Report: After all project work has been completed, the grantee will submit to the NPS three hard-copies and one electronic copy of a completion report. The Completion Report will contain:

- a. A narrative of work conducted.
- b. Photographic documentation of project work, including condition of the site prior to work; work in progress; and the completed project results (i.e., "before," "during" and "after" photos). A minimum of 15 images will be provided. Digital images (printed **and** CD copies) are the preferred format, although standard prints are acceptable.
- c. Documentation of compliance with all local code and permit requirements.
- d. Itemized documentation of costs incurred for the project, **including copies of all receipts**. The grantee must develop a cost-accounting system to document and itemize NPS costs and grantee in-kind contributions. This is typically accomplished by creating a three-column table showing 1) Itemized work expenses; 2) NPS contribution; 3) Applicant contribution, including cash, donated services and supplies.

## Project Task Schedule

Days to complete project tasks are estimated below, and begin from date of final signature of Grant. Completing project tasks ahead of schedule is encouraged. Extensions to the final project completion date will not be granted without documented proof of excusable delay.

May 31, 2013: Draft interpretive panel designs are completed and routed to NPS for review.

June 15, 2013: NPS returns comments and suggestions to design team.

June 28, 2013: Final draft interpretive panel designs are completed and routed to NPS for review.

July 12, 2013: NPS returns final comments and suggestions to design team.

November 1, 2013: Displays are fabricated and installed.

December 31, 2013: Completion report submitted to NPS

The project will be completed in its entirety by December 31, 2013.

### Stipulations

- As applicable, all work must be carried out in accordance with the Secretary of Interior's *Standards for the Treatment of Historic Properties*, outlined in *Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings*: <http://www.nps.gov/history/hps/tps/standguide>
- All project work is required to undergo review under Section 106 of the National Historic Preservation Act: <http://www.achp.gov/work106.html> The NPS will take responsibility for initiating Section 106, and submit required materials to the Arizona State Historic Preservation Office (SHPO), who will conduct the review. **Repair/installation work cannot begin until the review is complete**, which typically takes 30-45 days from date of receipt at the SHPO.
- All work must comply with accepted safety standards as put forth by the Occupational Safety and Health Administration. [www.osha.gov](http://www.osha.gov)
- All work must comply with local and state ordinances and building codes. It is the responsibility of the grantee to determine and obtain all required permits, which must be secured before work begins.
- Funds provided by the NPS to the grantee are subject to state and federal taxation. It is the responsibility of the grantee to determine and fulfill any required tax obligations.
- Project overruns will be the responsibility of the grantee. **No additional NPS funds may be granted for project costs that exceed the amounts projected in this Scope of Work.**
- NPS funds are paid to the grantee on a reimbursable basis only.
- Any changes to the Scope of Work must be made in writing to the NPS contracting office, before they occur.
- Extensions to project completion dates will not be accepted or granted without written proof of unequivocal, excusable delay. An excusable delay is caused by a reason beyond the grantees control, and without the grantees fault or negligence.

## **Credits**

The NPS will be credited with partial funding of the project in all related press releases and news events; as well as in a prominent location in all printed materials produced as deliverables for this project. The NPS will be cited and known as the "National Park Service, Route 66 Corridor Preservation Program".

## **Provisions for Protection of Property**

The interpretive signs will be protected and maintained for a period not less than ten years, as per the signed Property Maintenance and Protection Agreement submitted by the grantee with the original cost-share grant application.

## **Image Consent and Release**

The grantee, by agreeing to the terms of this grant, gives the NPS consent in perpetuity to use the name and images of the Flagstaff Route 66 Urban Trails System Rest Area for the purposes of illustration, display, publication, or any other lawful purpose.

## **Contact person(s) for grantee:**

Karl Eberhard  
Community Design and Redevelopment Manager, City Architect,  
Historic Preservation Officer  
Flagstaff City Hall  
211 West Aspen Ave.  
Flagstaff, AZ 86001

Telephone: 928-213-2969  
Email: [keberhard@flagstaffaz.gov](mailto:keberhard@flagstaffaz.gov)

Stacey Brechler-Knaggs  
Management Services Division, Grants Manager  
Flagstaff City Hall  
211 West Aspen Ave.  
Flagstaff, AZ 86001

Telephone: 928-213-2227  
Email: [sknaggs@flagstaffaz.gov](mailto:sknaggs@flagstaffaz.gov)

**Contact person for grantor:**

Kaisa Barthuli  
Route 66 Corridor Preservation Program  
National Park Service  
P.O. Box 728  
Santa Fe, NM 87504  
Telephone: 505-988-6701  
Fax: 505-986-5214  
Email: [kaisa\\_barthuli@nps.gov](mailto:kaisa_barthuli@nps.gov)

**14. B.**

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Chris Darnell, Assistant City Engineer  
**Date:** 06/26/2012  
**Meeting Date:** 07/17/2012



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**TITLE:**

**Consideration and Approval of Settlement Agreement:** Presidio in the Pines Homeowners Association, Inc., Tru-Built Construction, Inc., Majestic Presidio, LLC, Par Partners, LLC, Doucette Flagstaff I, LLC, and Presidio Financial, LLC.

**RECOMMENDED ACTION:**

Approve the settlement agreement.

**Policy Decision or Reason for Action:**

The City and Presidio Parties have reached a Settlement Agreement which results in the dismissal with prejudice of the lawsuit and release of all claims against the City.  
Decision Points: There are no additional decision points.

**Financial Impact:**

A companion Development Agreement contains a provision (shown in Exhibit D of the Development Agreement) to convert several private streets into public streets through the future completion and recording of a map of dedication. Under the Development Agreement, the City shall own, operate and maintain these streets. The Settlement Agreement contains a \$70,000 cash settlement provision, which shall be funded through the City's Self Insurance Trust Fund.

**Connection to Council Goal:**

Effective governance.

**Has There Been Previous Council Decision on This:**

No.

**Options and Alternatives**

(1) Approve the Settlement Agreement; (2) modify the Settlement Agreement; or (3) Reject the Settlement Agreement.

**Key Considerations:**

Under the terms of the Settlement Agreement, the City will negotiate with Miramonte Arizona, LLC, the new principal owner of a number of the Presidio parcels, regarding the disposition of the remaining penal sums of the bonds. These amounts shall be placed in escrow and made available to Miramonte to complete an agreed upon scope of work for the subdivision.

A Development Agreement between the City of Flagstaff and Miramonte Arizona, LLC, is also on this evening's agenda for Council's consideration.

**Community Benefits and Considerations:**

Settlement of this lawsuit results in the dismissal with prejudice of the lawsuit against the City and the release of all claims against the City. This settlement will also allow work on the subdivision to proceed toward final completion.

**Community Involvement:**

N/A.

**Date of Council Approval:**

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**Attachments:**    Settlement Agreement

## **SETTLEMENT AND RELEASE AGREEMENT**

THIS SETTLEMENT AND RELEASE AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2012, by and among Presidio in the Pines Homeowners Association, Inc., an Arizona non-profit corporation ("PPHOA"), Tru-Built Construction, Inc., an Arizona corporation ("Tru-Built"), Majestic Presidio, LLC, an Arizona limited liability company ("Majestic"), Par Partners, LLC, an Arizona limited liability company ("Par"), Doucette Flagstaff I, LLC, an Arizona limited liability company ("Doucette"), and Presidio Financial, LLC, an Arizona limited liability company ("Presidio Financial") (collectively referred to as the "Presidio Parties"), on the one hand, and the City of Flagstaff, an Arizona municipal corporation (the "City"), on the other hand. These persons and entities shall hereinafter be referred to collectively in the Agreement as the "parties" or each individually as a "party".

### **RECITALS**

A. The Presidio in the Pines Subdivision ("Presidio" or the "Subdivision") is a lawfully recorded subdivision of the State of Arizona, pursuant to a Final Plat (the "Plat") recorded in the office of the Coconino County Recorder on or about May 19, 2005, in Case 9, Maps 72, Instrument No. 3322439.

B. PPHOA is or will become the governing body for all lot owners in the Subdivision, and holds or will hold beneficial title to the tracts of land constituting the common areas within the Subdivision. Tru-Built, Majestic, Par, Doucette, and Presidio Financial are the owners of multiple lots within the Subdivision, and are members of PPHOA.

C. On or about September 20, 2004, the City, Premiere Acquisitions, LLC, an Arizona limited liability company ("Premiere"), and Luxury Lofts, LLC, an Arizona limited liability company ("Lofts") entered into the original Development Agreement for the development of the Subdivision (the "2004 DA"), which was recorded in the office of the Coconino County Recorder on or about September 20, 2004, as Document No. 3283782. The 2004 DA was supplemented on or about November 21, 2006 and December 1, 2008.

D. Miramonte Arizona, LLC, an Arizona limited liability company ("Miramonte"), has acquired, or is in the process of acquiring legal title to a number of residential lots within the Subdivision and intends to complete the development of the Subdivision pursuant to an amended development agreement ("Development Agreement") with the City. Upon the completion of its acquisition, Miramonte will be the successor in interest to Premiere and Lofts, to the extent that any or all of those entities have any remaining interests in or to any portion of the property within the Subdivision.

E. In connection with the 2004 DA, Premiere posted certain monetary assurances with the City (the "Bonds"), to assure its completion of the required

improvements for the development of the Subdivision, in accordance with the City of Flagstaff Public and Private Improvements Plans for Presidio in the Pines, Project No. 601 006N (the "Project"). Premiere subsequently defaulted in its obligations to complete the improvements and filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the District of Arizona on or about June 2, 2008. The bankruptcy was later converted to Chapter 7.

F. On or about July 28, 2010, the Presidio Parties filed suit in Coconino County Superior Court against the City, in CV 2010-0649 (the "Lawsuit"), seeking declaratory relief, monetary damages, and other relief relating to the Subdivision, the development of the Project, and the Bonds. In the Lawsuit, the Presidio Parties allege that the City breached its duties to them in connection with the Subdivision and the Bonds. The City has denied any liability to the Presidio Parties.

G. Each party to this Agreement has made a careful and independent investigation into all of the facts deemed by such party to be material. Because of the desire of the parties to resolve all matters relating to the Lawsuit and the Subdivision, and because of the expense and uncertain outcome of any litigation involving such claims and disputes, the parties desire to enter into this Agreement to forever resolve all past, present or potential disputes or claims existing between them and relating to the Subdivision, the Lawsuit, and the Bonds. Each party acknowledges that this Agreement is the product of a compromise and settlement of disputed claims. The parties further agree and acknowledge that this Agreement is not intended to be, and shall not be construed as, a confession or admission of liability by any party or an admission of any fact. Without limiting the foregoing, the parties further agree that this Agreement does not manifest an acceptance of any other party's factual or legal positions taken or asserted in the Lawsuit.

**NOW, THEREFORE,** in consideration of the mutual representations, warranties, covenants, agreements and releases set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## **C O V E N A N T S**

1. **Recitals.** The foregoing Recitals are incorporated as a part of these Covenants, and the parties hereto represent and warrant the truth of all that is contained in the Recitals. The parties agree that the covenants set forth herein are contractual and not mere recitals.

2. **Terms of Settlement.** In order to fully resolve their disputes, the parties agree as follows:



a. The “agreed-upon scope of work” as used herein will be based upon the City approved subdivision development plans more particularly described and depicted in the Public and Private Improvement Plans for the Presidio in the Pines, Project No. 601 006N, original date of April 19, 2005; and the Landscape Plans for Presidio in the Pines, Project No. 03084, dated February 14, 2005, as modified and approved by the City of Flagstaff in conjunction with settlement of the “Bonds”. The Engineer’s Estimate as provided by Miramonte per Section 6.3 of the Development Agreement will be based upon the plans described above. Said Scope of Work will be agreed to in writing by the City and Miramonte prior to the issuance of any permit for construction.

b. The City will negotiate in good faith with Miramonte regarding the terms of an amendment to the 2004 DA, called the Third Supplement To the Development Agreement Between City of Flagstaff and Miramonte Arizona, L.L.C, pursuant to which the following remaining penal sums of the Bonds will be placed in escrow and made available to Miramonte to complete the agreed-upon scope of work:

(1) Subdivision Bond -- \$1,486,783.00;

(2) Landscaping Bond--\$1,390,099.12 (See Par 6.4 of the Third Supplement to the Development Agreement. The actual amount may be lower).

These monies shall be known as the Public Improvement Bond Funds for purposes of this Settlement Agreement.

c. PPHOA agrees that, as a condition of this Agreement, in accordance with its By-Laws and Covenants, it will assess and collect from its members and the owners of record of each lot or tract in the Subdivision (the “Special Assessment”), and retain in escrow amounts sufficient, when combined with the Public Improvement Bond Funds to fund any given phase of construction. Miramonte and the PPHOA will meet the City’s assurance requirements with respect to the agreed-upon scope of work, as follows:

- (1) Not less than 105% of the contractor’s binding estimate for the agreed-upon scope of work, which includes a contingency of not less than ten percent (10%) of the base bid;
- (2) Withholding of five percent (5%) of each approved payment to the contractor, to be held in escrow pending completion of the agreed-upon scope of work;
- (3) The amounts paid by the City pursuant to paragraph 2(d) of this Agreement.

The Special Assessment, including the amounts paid by the City pursuant to paragraph 2(f) of this Agreement, and any amounts contributed by Miramonte, shall be retained in an escrow with First American Title Agency, Flagstaff, Arizona, separate and apart from the Public Improvement Bond Funds. The Special Assessment Funds shall be

disbursed only when, and to the extent that, the amount earned by the construction contractor exceeds the amount of Public Improvement Bond Funds in each phase of construction. Upon complete and satisfactory completion of the agreed-upon scope of work, and payment of all amounts owing to the contractor for such work, and subject to compliance with applicable City Ordinances, any excess funds from the Special Assessment shall be refunded to PPHOA.

d. PPHOA agrees to indemnify, defend, save and hold harmless, the City for claims made against the City by PPHOA members who, acting in their individual capacity, assert or allege that, as a consequence of the City's exercise of duties and best efforts described in Par. 6.4 of the Third Supplement to the Development Agreement, the result actually and materially produces less in the way of landscape improvements to PPHOA common areas than originally approved by the Project Plans dated 2005. For its part, the City warrants and agrees that, should the City, in the exercise of its duties and best efforts described in Par. 6.4 of the Third Supplement to the Development Agreement, also agree to settle and resolve the Landscape Improvement Bond Fund for an amount that covers less than all the scope of common area landscape improvements originally bonded for, the City shall not, then, require any deficiency in the scope of landscaping to become a requirement or demand made upon the PPHOA, the Master Developer, or any individual member of the PPHOA; the deficiency having effectively been waived by the City as a condition of fulfilling its duties as per Par. 6.4..

e. PPHOA assures City that, as a condition of PPHOA architectural site plan review and approval, the PPHOA shall require the owner/builder to demonstrate completion of sidewalk improvements across the frontage of the lot(s) adjacent to the street(s) including all appropriate sides of corner lots. Site plans approved by PPHOA and submitted to the City for issuance of building permit(s) shall depict finished sidewalks. City agrees that it shall not issue certificates of occupancy to any lot owner/builder until sidewalk(s) are installed and accepted. Unless a building permit has been issued and construction commenced thereon, every undeveloped lot(s) in a Phase where street improvements have been dedicated and accepted by the City shall have completed sidewalks within: (a) on lots fronting public streets, three years; and (b) on lots upon all other streets, five years. PPHOA agrees, as a default position, to produce the sidewalks upon each un-commenced lot(s) within ninety (90) calendar days from the expiration of the deadlines specified herein.

f. As a consideration for this agreement and the dismissal of the Lawsuit, the City agrees to pay PPHOA, within ten (10) days of the satisfaction of the conditions set forth in paragraph 3 of this Agreement, the sum of \$70,000.00, to be added to the Special Assessment and retained in escrow as part of the assurances to the City for the completion of the agreed-upon scope of work for all phases of construction.

**3.     Depository For Documents Prior To Effectiveness.** An escrow shall be opened at First American Title Agency, Flagstaff, Arizona, for the purpose of acting as a depository for all the fully executed original documents necessary for the effectiveness and implementation of this Agreement. Specifically, those fully executed documents comprising the escrow shall be: (a) fully executed counterparts of this Settlement Agreement; (b) the fully executed 3<sup>rd</sup> Supplement to the Development Agreement; (c) fully executed counterparts of the Memorandum of Understanding between Miramonte, Arizona, L.L.C., and PPHOA. The escrow shall have instructions such that, upon receipt of the last of the three executed versions of the documents, the Agent shall close the escrow by: (i) recording the 3<sup>rd</sup> Supplement to the Development Agreement with copies to the parties; (ii) exchanging counterparts of the Settlement Agreement with City and PPHOA, with copy to Miramonte; and (iii) exchanging counterparts of the Memorandum of Understanding as between the PPHOA and Miramonte, Arizona. Neither the Settlement Agreement nor the Memorandum of Understanding shall be recorded. Escrow must close not later than August 1, 2012 or this settlement is null and void and of no effect whatsoever.

**4.     Disposition of Lawsuit.** Promptly upon execution of this Agreement, the Presidio Parties and the City shall authorize and instruct their respective counsel to jointly file a motion to stay all further proceedings in the Lawsuit, pending the implementation of the settlement as provided in paragraph 2 of this Agreement. Further, upon the recordation of an amendment to the 2004 DA by the City and Miramonte, as contemplated by paragraph 3 of this Agreement, and after negotiation of an acceptable settlement to the Landscape Improvement Bond, and after negotiation of appropriate and acceptable escrow instructions governing the Public Improvement Bond Funds and the Special Assessment Escrow, and after deposit of the consideration contemplated in paragraph 2(f) of this agreement, the Presidio Parties and the City shall authorize and direct their respective counsel to jointly file a stipulation for dismissal of the Lawsuit, with prejudice, with each party bearing its own attorneys' fees and costs incurred therein.

**5.     Mutual Release of Claims.**

**a.     Release by Presidio Parties:** As of the Effective Date of this Agreement, and except as otherwise expressly provided in this Agreement, the Presidio Parties, and each of them, hereby irrevocably release and discharge the City, and its current and former mayors, council members, department managers, employees, agents, representatives, and attorneys, from any claim, cause or right of action, liability, or obligation of any kind, type, or nature, whether presently known or unknown, accrued or not accrued, which arises out of or which in any manner relates to the Subdivision, the Bonds or assurances posted by Premiere and/or Loft, the adequacy or sufficiency of the Bonds or assurances posted by Premiere and/or Loft, and any and all claims which were or which could have been asserted in the Lawsuit.

**b.     Release by City:** As of the Effective Date of this Agreement, and except as otherwise expressly provided in this Agreement, the City hereby irrevocably

releases and discharges the Presidio Parties, and each of them, and their current and former members, agents, employees, managers, partners, shareholders, representatives, and attorneys, from any claim, defense, cause or right of action, liability, or obligation of any kind, type, or nature, whether presently known or unknown, accrued or not accrued, which arises out of or which in any manner relates to the Subdivision, the Bonds or assurances posted by Premiere and/or Loft, the adequacy or sufficiency of the Bonds or assurances posted by Premiere and/or Loft, and any and all claims which were or which could have been asserted in the Lawsuit.

c. Notwithstanding anything to the contrary, no provision of this Agreement shall constitute a release of any claim arising out of a breach of this Agreement; all such claims being expressly reserved.

6. **Time is of the Essence.** Time is of the essence of this Agreement and each term and provision hereof.

7. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, representatives and assigns.

8. **Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement except those persons identified in the release provisions of this Agreement (Paragraph 5; all parties released pursuant thereto are expressly designated as actual and intended third-party beneficiaries of such release provisions.

9. **Attorneys' Fees.** Should any litigation be commenced between the parties hereto concerning the terms of this Agreement, or the rights and duties of the parties hereto, the prevailing party or parties in such proceeding or litigation shall be entitled, in addition to such other relief as may be granted, to payment of all of its costs, expenses (including, but not limited to, expert fees), and reasonable attorneys' fees incurred in connection therewith.

10. **Entire Agreement.** This Agreement is a fully integrated document, containing the entire understanding among the parties, and supersedes and integrates any prior understandings or written or oral agreements among the parties respecting the subject matter hereof.

11. **Representations and Warranties.**

a. Each party to this Agreement represents, warrants and covenants to the other parties as follows:

i. This Agreement is the result of negotiations between parties experienced in business and financial affairs who have equal access to information concerning this transaction. They have obtained legal advice concerning the meaning and

effect of this Agreement and that they had sufficient time to consider the meaning and effect of this Agreement.

ii. They have taken all necessary action to authorize the execution, delivery, and performance of this Agreement and have the authority to execute, deliver and perform this Agreement and all the transactions contemplated hereby, including, without limitation, the releases provided for in Paragraph 7 above.

iii. The enforceability of this Agreement is not affected by the provisions of any other agreement to which such party is a party and will not conflict with any provision of any law or regulation to which such party is subject.

iv. There are no actions, suits or proceedings pending against such party in any court or by or before any governmental agency or instrumentality and no existing judgments, orders or other restraints, which would materially affect the ability of such party to carry out the transactions contemplated by this Agreement.

**12. Controlling Law and Choice of Forum.** This Agreement and all questions relating to its validity, interpretation, performance, and inducement shall be governed by and construed, interpreted, and enforced in accordance with the substantive laws of the State of Arizona (without reference to conflict of law principles). Any action pertaining to this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona, in and for the County of Coconino, and all parties irrevocably consent to exclusive jurisdiction and venue in such court for such purposes.

**13. Indulgences Not Waivers.** Neither any failure nor any delay on the part of any party to exercise any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or of any other right, remedy, power or privilege.

**14. Construction.** This Agreement is the result of negotiations between the parties and was initially drafted by the attorneys for the City as a matter of convenience only and shall not be construed for or against any party on account thereof, but shall be construed according to its plain meaning.

**15. Additional Instruments and Acts.** Without limiting the provisions of Paragraph 2 of this Agreement, the parties shall execute and deliver all such other instruments and take all such other action as any party may reasonably request from time to time, before or after the execution of this Agreement, in order to effectuate the transactions provided for herein.

**16. Modifications and Amendments.** There shall be no amendments or modifications to this Agreement unless any such amendment or modification is in writing and signed by all parties to this Agreement. Any alleged or purported amendment or

modification shall be void and unenforceable unless it is in writing and signed by all parties to this Agreement. This provision concerning amendments or modifications cannot be waived or otherwise made unenforceable except by a written document signed by all parties to this Agreement.

**17. Exhibits.** Should any Exhibits be attached to this Agreement, such Exhibits shall be fully incorporated herein and made a part of the Covenants of this Agreement, whether the Exhibits are executed by any or all of the parties hereto.

**18. Headings; Miscellaneous.**

a. The headings used in this Agreement are used for administrative purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

b. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, or other gender, masculine, feminine or neuter, as the context requires; the words "including," "includes" and "include" shall mean without limitation, by reason of enumeration.

c. The word "affiliate," as used herein, shall mean a corporation, limited liability company, partnership, joint venture, association, business trust or similar entity organized under the laws of the United States of America or a state thereof which directly or indirectly controls, is controlled by, or is under common control with any of the parties hereto and, as to natural persons, shall also include the immediate family, spouse, parents, lineal descendants and siblings of such persons, and any other person who resides with the identified persons. For purposes of this definition, "control" means the power to direct the management and policies of an entity through the ownership of at least a majority of its voting securities or otherwise, or the right to designate or elect at least a majority of the members of its governing body by contract or corporate membership rights or otherwise.

d. The word "person," as used herein, means an individual, association, unincorporated organization, corporation (for profit or nonprofit), limited liability company, partnership, joint venture, business trust or government or agency or a political subdivision thereof, or any other entity.

**19. Cancellation for Conflict of Interest.** This agreement is subject to the cancellation provisions of A.R.S. § 38-511.

**20. Effective Date.** The Effective Date of this Agreement shall be close of the escrow as set forth in Paragraph 3 of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the dates set forth below.

DATED: \_\_\_\_\_

**Presidio in the Pines Homeowners Association, Inc.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_

**Tru-Built Construction, Inc.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_

**Majestic Presidio, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_

**Par Partners, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_

**Doucette Flagstaff I, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_

**Presidio Financial, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_

**City of Flagstaff**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**City Clerk**

**APPROVED AS TO FORM AND CONTENT:**

**MARISCAL, WEEKS, McINTYRE  
& FRIEDLANDER, P.A.**

\_\_\_\_\_  
Michael S. Rubin  
Attorneys for City of Flagstaff

DATED: \_\_\_\_\_

**THE LAW OFFICE OF WILLIAM  
P. RING, P.C.**

\_\_\_\_\_  
William P. Ring  
Attorney for Presidio in the Pines  
HOA; Tru-Built Construction, Inc.;  
Majestic Presidio, Inc.; Par  
Partners, LLC; and Doucette  
Flagstaff I, LLC

DATED: \_\_\_\_\_



DATED: \_\_\_\_\_

**CHESTER & SHEIN, P.C.**

\_\_\_\_\_  
David E. Shein  
Attorney for Presidio Financial, LLC

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**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Chris Darnell, Assistant City Engineer  
**Date:** 06/26/2012  
**Meeting Date:** 07/17/2012



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**TITLE:**

**Consideration and Adoption of Resolution No. 2012-31:** A resolution approving the Third Supplement to the Development Agreement between the City of Flagstaff and Miramonte Arizona, LLC.

**RECOMMENDED ACTION:**

Read Resolution No. 2012-31 by title only.  
Adopt Resolution No. 2012-31.

**Policy Decision or Reason for Action:**

Miramonte Arizona, LLC has proposed to purchase a large number of platted lots within Presidio in the Pines and to serve as the Owner/Developer in constructing the remaining required improvements in order to complete development of the subdivision. On July 28, 2010, numerous Presidio property owners filed suit in Coconino County Superior Court against the City seeking declaratory relief, monetary damages, and other relief relating to the Presidio in the Pines subdivision, the development of the project, and certain bonds related to the project. In the lawsuit, these Presidio property owners allege that the City breached its duties to them in connection with the subdivision and the bonds. The City has denied any liability.

This Third Supplement to the Development Agreement allows Miramonte to complete development of the subdivision using bond fund proceeds and the Presidio in the Pines HOA Special Assessment Funds as detailed in the Settlement Agreement. It also facilitates dismissal of the lawsuit with prejudice and release of all claims against the City by the other Presidio property owners. The companion Settlement Agreement between the City of Flagstaff and other Presidio property owners is also on this evening's agenda for Council's consideration.

**Financial Impact:**

This Third Supplement to the Development Agreement contains a provision to convert several private streets into public streets through the future completion and recording of a map of dedication. Under this Third Supplement to the Development Agreement, the City shall own, operate and maintain these streets.

**Connection to Council Goal:**

Effective governance.

**Has There Been Previous Council Decision on This:**

No.

**Options and Alternatives**

Approve the Third Supplement to the Development Agreement, Modify the Third Supplement to the Development Agreement, or Reject the Third Supplement to the Development Agreement.

**Community Benefits and Considerations:**

Approval of this Third Supplement to the Development Agreement will allow work on the subdivision to proceed toward final completion of the Presidio in the Pines subdivision, and, in combination with Settlement Agreement, will result in the dismissal with prejudice of the lawsuit against the City and the release of all claims against the City.

**Community Involvement:**

N/A.

**Date of Council Approval:**

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**Attachments:**    2012-31  
                          Development Agreement  
                          Exhibit A  
                          Exhibit B  
                          Exhibit C  
                          Exhibit D

**RESOLUTION NO. 2012-31**

**A RESOLUTION APPROVING THE THIRD SUPPLEMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FLAGSTAFF AND MIRAMONTE ARIZONA, LLC**

**WHEREAS**, Miramonte Arizona, LLC ("Owner") is the owner of, or controls, certain property within the City of Flagstaff located in the Presidio in the Pines subdivision, described in Exhibits A through D (the "Property") to the Third Supplement to the Development Agreement between the City of Flagstaff and Miramonte Arizona, LLC, attached to the staff summary report in support of this resolution; and

**WHEREAS**, City staff and the Owner have prepared a Third Supplement to the Development Agreement between the City of Flagstaff and Miramonte Arizona LLC ("Agreement"), as authorized by Arizona Revised Statutes Section 9-500.05, regarding the development of the Property, a copy of which Agreement is attached to the staff summary report in support of this Resolution; and

**WHEREAS**, the Owner seeks City Council approval of the Agreement; and

**WHEREAS**, the City Council has reviewed the proposed Agreement and finds that it is in the public interest to approve the Agreement;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

SECTION 1. That the Third Supplement to the Development Agreement between the City of Flagstaff and Miramonte Arizona, LLC, attached to the staff summary report in support of this resolution, be hereby approved and the Mayor be authorized to execute the Agreement on behalf of the City of Flagstaff.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

---

CITY ATTORNEY

When recorded, mail to:  
City Clerk  
City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

PRESIDIO IN THE PINES  
THIRD SUPPLEMENT TO THE DEVELOPMENT AGREEMENT

BETWEEN  
CITY OF FLAGSTAFF  
AND  
MIRAMONTE ARIZONA, LLC

### THIRD SUPPLEMENT TO DEVELOPMENT AGREEMENT

THIS **THIRD SUPPLEMENT** TO THE DEVELOPMENT AGREEMENT ("Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the City of Flagstaff, a municipal corporation organized and existing under the laws of the State of Arizona ("City"), and Miramonte Arizona, LLC, an Arizona limited liability company ("Owner").

#### RECITALS

- A. Owner has taken all action necessary and required to become the owner of real property situated within Coconino County, Arizona, currently located within the incorporated boundaries of the City of Flagstaff, Arizona, within the subdivision of Presidio in the Pines, as depicted generally in **Exhibit A**, (the "Property"), attached to this Agreement.
- B. The City, Premiere Acquisitions, L.L.C., an Arizona limited liability company ("Premiere"), and Luxury Lofts, L.L.C., an Arizona limited liability company ("Lofts") originally entered into a Development Agreement dated September 16, 2004 and recorded on September 20, 2004, in the Coconino County Recorder's Office as Document No. 3283782 regarding the Property and other property relating thereto and as amended by that certain First Supplement to Development Agreement dated November 21, 2006 by and between the City, Premiere, Lofts and Cedar Ridge Investments, L.L.C., an Arizona limited liability company ("Cedar") recorded on March 20, 2007, in the Coconino County Recorder's Office as Document No. 3430464. The Development Agreement was subsequently amended by that certain Second Supplement to Development Agreement dated December 1, 2008 by and between the City, Premiere, Lofts and Cedar recorded on December 10, 2008 in the Coconino County Recorder's Office as Document No. 3507952 (collectively, the "Original Agreement"). Cedar subsequently transferred and assigned all rights, title, and interests in its property to Grayson, L.L.C., which agreed to assume all duties and responsibilities previously assumed by Cedar in the document entitled Notice of Assumption of Duties and Responsibilities Under Development Agreements, dated October 4, 2011 and recorded on October 27, 2011 in the Coconino County Recorder's Office as Document No. 3609230. Owner is or will be the successor in interest to Premiere, Lofts and Cedar (now Grayson) to the

extent any or all of them have any remaining interests in or to the Property. Since the time of the Original Agreement and amendments, circumstances and ownerships have changed, and Owner desires to enter into this Agreement.

- C. The Owner desires and intends to develop the Property as more particularly described herein and as depicted and approved by the City in the Public and Private Improvements Plans for Presidio in the Pines, Project No. 601 006N, original date of April 19, 2005, and the Landscape Plans for Presidio in the Pines, Project No. 03084, original date of February 14, 2005 (the "Project").
- D. The Final Subdivision Plat for the Project was approved for the Property and recorded on May 19, 2005 in the Coconino County Records as Document No. Case 9, Map 72 (the "Final Plat").
- E. Owner has requested, and the City is willing to accept, a phased development as specified in Section 6.3, under the conditions set forth in this Agreement.
- F. The Owner has requested that the City consider ways to expedite development of the Presidio in the Pines subdivision and allow construction of residential buildings in accordance with the Phased Development Plan concurrently with completion of the public and private infrastructure improvements. The concept of "Sheetrock Hold" as set forth in Section 6.2.2 of this Agreement has been established to ensure that the situation is not created whereby future residents of the development attempt to move into their new homes before the public and private improvements are complete, fully operational and accepted. It shall be the Owner's duty to inform all builders and future property owners of these conditions. It shall further be the Owner's duty to inform all builders and future property owners of any agreed upon change in scope in the plans referenced in Recital C herein.
- G. The City and the Owner are entering into this Agreement pursuant to the provisions of Arizona Revised Statutes ("A.R.S.") § 9-500.05 (pertaining to development agreements) in order to facilitate the development of all public infrastructure, private infrastructure and recreational and landscape improvements required for the Property.



- H. City acknowledges that the zoning designations approved in the zoning ordinance are vested. The City has an interest in ensuring that the development of the Property complies with conditions, terms and requirements of the rezoning ordinance, Ordinance No. 2004-05, as well as those documents which shall hereafter be referred to as the "Project Documents" as outlined in Section 3. Development Standards.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### **AGREEMENT**

1. Effective Date and Term.
  - 1.1 Effective Date. This Agreement will not become effective, and neither party will have any obligation under this Agreement unless each of the following occurs: (1) this Agreement is executed by both parties; and (2) this Agreement is recorded as required by A.R.S. § 9-500.05(D). The date on which all of the foregoing items have been completed is the "Effective Date" of this Agreement. If a challenge is properly made to this Agreement, this Agreement will become effective after resolution of such challenge in favor of the City.
  - 1.2 No Default. Any delay relative to the Effective Date of this Agreement by judicial challenge, referendum, or injunction filed by parties acting independently of and not under the control of the City will not be deemed a default by the City.
  - 1.3 Duration. This Agreement will automatically terminate on the twenty-fifth (25<sup>th</sup>) anniversary of the Effective Date, unless this Agreement is rescinded or terminated earlier as provided for herein.
2. Zoning. Owner hereby agrees to be subject to all the terms, conditions, and requirements of City Ordinance 2004-05 and incorporated by this reference ("Zoning Ordinance"). The City acknowledges that the Developer may request a zoning change for portions of the Property as defined by Exhibit "B" Commercial parcels. The City staff agrees to support land use modifications to convert

the interior portions of the commercial parcels to a medium or high density residential zoning category, provided the proposed uses and structure complies with the original principles of "Traditional Neighborhood Design" as established in the Flagstaff Area Regional Land Use and Transportation Plan at the time of the original rezoning approvals set forth in Ordinance No. 2004-05 dated May 18, 2004

- 2.1 Further Zoning Changes. For a period of two (2) years from the Effective Date of this Agreement, and subject to the vested rights confirmed in Section 2 of this Agreement and any additional vested rights that may accrue to Owner with respect to any portion of the Property, the City agrees not to initiate any changes or modifications to the zoning districts that have been approved for the Property as of the Effective Date of this Agreement, except at the request of the owner of that portion of the Property for which such zoning change is sought, or except pursuant to the provisions of A.R.S. §9-462.01(E).
3. Development Standards. Development of the Property will be governed by the "Project Documents" that include: Ordinance 2004-05; the Development Agreement as amended, City's codes, ordinances, regulations, rules, guidelines and policies controlling permitted uses of the Property, design review guidelines, the density and intensity of uses, the maximum height and size of the buildings within the Property, as well as the standards for off-site and on-site public improvements in existence as of the Effective Date of the Original Development Agreement, as identified in Recital B., herein. The City acknowledges that all offsite obligations of the original developer have previously been met.
4. Development Fees. Owner agrees and understands that upon the Effective Date of this Agreement all building permits, property development review, and other fees normally applicable to construction within the City will apply to the Project except the Public Improvement Permit fees for the historic public improvements, as those fees have already been paid to the City. The Public Improvement Permit fee is the only fee that has been paid by Owner, as of the effective date of this Agreement.

5. Guiding Principles. The parties acknowledge that development activities for the Property may extend over several years and that many of the requirements and procedures provided for in this Agreement contemplate that use of the Property in the future may be subject to procedures, requirements, regulations and ordinances not presently in effect, as well as actions and decisions by City staff and officials which cannot be provided for with particularity at the time the Agreement was executed. With respect to such, the parties agree that they will act in good faith and with reasonableness and consistency in implementing, operating under, and exercising the rights, powers, privileges and benefits conferred or reserved by this Agreement or by law. However, denying a permit for an Owner's failure to meet the City's standard criteria for such permit will not be deemed a breach by the City of this Agreement unless the same is inconsistent with this Agreement.
6. Subdivision Report, Building Permits, Public Improvements, On-Site/Landscaping Improvements and General Conditions.
- 6.1 Subdivision Report. Owner warrants and represents to the City, with respect to all of the lots it owns or controls, that it will take any and all necessary and appropriate actions to comply with all applicable requirements of the Arizona Department of Real Estate, including, but not limited to, filing and obtaining the approval of an amended, corrected, or replacement Public Subdivision Report for the Property prior to selling or offering for sale any lot or parcel within the Property.
- 6.2 Issuance of Building Permits. The City shall, subject to the terms of this Agreement, issue building permits prior to completion of public and private infrastructure improvements if all permit fees have been paid and the Owner has commenced construction of the public and private infrastructure improvements in a given Phase.

The City shall issue a Stop Work Order to the Owner and/or builders on any/all permitted buildings if the Owner ceases construction of the public and private

infrastructure improvements in a given phase for more than 45 calendar days, as determined by the City.

- 6.2.1 Foundations Only. The City shall allow Owner and/or builders to complete foundations, including utility installations but not floor slabs, for any building permit issued. The City shall issue a Stop Work Order to the Owner and/or builders on any/all permitted buildings after the pre-floor slab inspection if; 1) the Rough Grading Certification for drainage infrastructure improvements has not been completed by the Owner and accepted by the City in a given phase and/or; 2) all public waterlines and appurtenances have not been completed by the owner and accepted by the Arizona Department of Environmental Quality and City in a given phase.
- 6.2.2 Sheetrock Hold. The City shall issue a Stop Work Order to the Owner/builders on any/all permitted buildings prior to the sheetrock nail inspection if the public and private infrastructure improvements in a given phase are not complete and will not be complete and accepted in 45 calendar days or less based on performance schedules of the Owner's contractors, anticipated duration of Agency approvals, acceptance of private utility systems (electric, natural gas telephone and cable television) by the appropriate private utility company and completion of the Final Grading Certificate by the Owner and acceptance by the City.
- 6.2.3 Certificate of Occupancy. The City shall issue the Certificate of Occupancy for any/all buildings when all requirements of the applicable Building Code and other City Codes and ordinances have been satisfied, and if all public and private infrastructure improvements are complete and accepted, including completion of the Final Grading Certificate for improvements by the Owner and acceptance by the City in a given phase.
- 6.2.3.1 Conditional Certificate of Occupancy. A Conditional Certificate of Occupancy may be issued in accordance with Flagstaff Zoning Code, Div. 10-20.40.030.D.

- 6.3 Public Improvements. The City is in receipt of bond funds from the project's surety, American Contractors Indemnity Corporation (ACIC), in the amount of \$1,486,783 which are the proceeds of the financial assurance provided by a prior developer of the Project for the Subdivision Public Improvements (the "Public Improvement Bond Funds"). The Owner shall prepare for City approval, which shall not unreasonably be withheld, a Phased Infrastructure Master Plan with a Phasing Schedule. Each Phase shall address interim condition details, including, at a minimum, roadway terminations, drainage solutions, assurance of performance estimates and emergency access to enable each phase to "stand on its own". The Public Improvement Bond Funds shall only be used to construct public water & sewer lines in all phases and a portion of the Phase I Public Improvements in accordance with the Release Agreement dated November 17, 2011 between the City and ACIC, as described in Exhibit C attached to this agreement. Owner agrees to make full and timely disclosure to the current and any future lot owners of any agreed-upon reduction in scope of the improvements from the original (2005) plans and shall indemnify and hold the City harmless from any claims relating to or arising from such reduction in scope or any alleged failure to disclose same.
- 6.4 On-Site/Landscaping Improvements. The City will use its best efforts to recover the remaining penal sum of the On-Site/Landscaping Improvement Bond Funds (the "Landscaping Improvement Bond Funds") from ACIC pursuant to an agreement to be entered into between the City and ACIC. The Landscaping Improvement Bond Funds are the remaining financial assurance provided by a prior developer of the Project for the On-Site/Landscaping Improvements. The Owner shall prepare for City approval, which shall not unreasonably be withheld, a Phased On-Site/Landscaping Master Plan which contains landscaping and irrigation details for all parkways and common areas. The Landscaping Improvement Bond Funds shall be used only to construct and install the On-Site/Landscaping Improvements per any agreement reached in relation thereto between the City and ACIC. Owner shall complete all sidewalk and parkway landscaping improvements at the time of Phase 1 infrastructure construction except in those areas which are adjacent to lots requiring street accessibility during building construction. For those

lots requiring street accessibility during building construction, sidewalk and parkway landscaping improvements shall be completed prior to issuance of Certificate of Occupancy for each lot. Upon the first Certificate of Occupancy being issued within a phase, all other remaining areas must have sidewalk and landscaping improvements completed by Owner within 3 years for areas along public streets and within 5 years for areas along private streets. Owner agrees to make full and timely disclosure to the current and any future lot owners of any agreed-upon reduction in scope of the improvements from the original (2005) plans and shall indemnify and hold the City harmless from any claims relating to or arising from such reduction in scope or any alleged failure to disclose same.

- 6.5 General Conditions. The Public Improvement Bond Funds currently held by the City and the On-Site/Landscaping Improvement Bond Funds, when received by the City, (collectively, the "Bond Funds") shall be placed in two separate escrow accounts (one for the Public Improvement Bond Funds, and one for the On-Site Landscaping Improvement Bond Funds - "Escrow Accounts") with First American Title Company ("Escrow Agent"). The City and Owner shall execute escrow instructions, for each account, consistent with the terms and conditions hereof which shall entitle Owner to utilize Bond Funds from time to time to pay for work relating only to the Public Improvements and On-Site/Landscaping Improvements approved by the City and subject to the requirements of the agreements between the City and ACIC controlling the use of the respective Bond Funds (collectively the "ACIC Agreements"). The Public Improvements and On-Site/Landscaping Improvements will be described in the Phased Infrastructure Master Plan and the Phased On-Site/Landscaping Master Plan, each to be prepared by the Owner and approved by the City. The escrow instructions shall permit disbursement to Owner for actual expenses incurred by Owner, only as approved by the City, in connection with the performance of the Public Improvements and On-Site/Landscaping Improvements, and in accordance with the ACIC Agreements. Within five (5) business days of receiving a progress payment request, the City will process such request and forward such request to the Escrow Agent for payment. The City shall

have no obligation to expend any funds in relation to the Public Improvements and/or the On-Site Landscaping Improvements, release of the Bond Funds from escrow being the limit of any obligation or liability on the part of the City in relation to or for design, construction, and/or maintenance (other than maintenance as set forth in Section 8.1 below) of such improvements.

- 6.5.1 Assurance of Performance and Partial Releases. Owner shall provide City with an acceptable Assurance of Performance for public and private improvements for each and every phase the Owner commences, as presently required by the City Zoning Code. Such Assurance of Performance shall be in an amount necessary to cover the construction of those improvements not covered by the Public Improvement and Landscaping Bond Funds. The City agrees that Owner may post the Assurance of Performance in the form of the Escrow Accounts, provided that the Bond Funds, combined with sufficient funds obtained from the assessment of the owners of lots and parcels, constitute 120% of the Owner's construction estimate. Partial releases of Assurance of Performance for completed improvements will be allowed in accordance with the City Zoning Code, with the exception that if the Owner elects to provide a cash assurance in the amount of 120% of the Owner's construction estimate, as agreed to by the City Engineer, City will allow partial releases on a monthly basis based upon the specific work performed under the line items in the Engineer's Estimate, the percentage completed, and the value therefore established in the Engineer's Estimate. In no event shall the cash assurance be drawn below 20% of the total original assurance amount, prior to final written acceptance by the City of the entire work covered by the cash assurance. Owner shall separate costs for bond funded public improvements and landscaping from Owner funded improvements when submitting application for each partial release of Assurance of Performance.
- 6.5.2 As-Built Drawings. City agrees to provide as-built drawings for all public improvements.
- 6.5.3 ADEQ Coordination. City agrees to be responsible for required permits and construction approvals of the water and sewer systems to meet Arizona Department of Environmental Quality regulations.

- 6.6 Coordination and Cooperation with Homeowners Association. The parties acknowledge that Owner does not own or control all of the lots within the Project, nor the common areas within the Presidio subdivision to be improved as contemplated hereby. As a result, Owner does not have the legal or financial ability to accomplish all work described herein or in any of the plans referred to herein without the consent, cooperation and contribution by the Presidio homeowners association. Accordingly, notwithstanding any other terms and conditions hereof, in the event the Presidio in the Pines Homeowners Association is legally enjoined from enacting the Special Assessment called for in the Settlement Agreement, or if the PPHOA otherwise fails to collect sufficient funds to commence or complete capital improvements as specified in the Phased Infrastructure Master Plan and Phasing Schedule, then Owner shall not be held in default hereunder and shall not be required to pursue improvements beyond the scope of work established by Phase I Public Improvements in accordance with the Release Agreement dated November 17, 2011, [Exhibit C]. Owner's obligations are also contingent upon the Presidio homeowners association permitting the work contemplated hereby and performing its obligations described herein and in the settlement agreement with the City executed in connection with this Agreement. Owner shall consult with the Presidio homeowners association in connection with all plans and other submittals prepared by Owner and as described herein.
7. Public Rights-of-Way. Historic public rights-of-way dedications required within the Property were completed in conjunction with the Final Plat. Additional public rights-of-way dedications are to be accomplished through a Map of Dedication whereby certain currently private rights-of-way will be dedicated to the public by Owner as shown in Exhibit D. All other private rights-of-way will remain in private ownership.
8. Improvement Maintenance Responsibilities of the City. Upon acceptance by the City, the City agrees to assume, at the City's expense, the maintenance and repairs in perpetuity of all improvements located within public rights-of-way per current City policies, except as modified in section 8.1 below.



8.1 Improvement Maintenance Responsibilities of Private Parties. Owner acknowledges that certain improvements located within the public rights-of-way including stormwater conveyance facilities, those portions of sidewalks not subject to the City's current cost-sharing policy, on-street parking spaces, and street lights that do not meet current City standards shall be maintained and repaired in perpetuity by private parties including the HOA or the adjacent property owner. All landscaping, irrigation system, and open space/park amenities associated with the overall development including those that are located within public rights-of-way shall be owned and maintained in perpetuity by private parties including the HOA or the adjacent property owner. Snow removal for those streets, alleys, parking spaces, and driveways that are not located within public rights-of-way shall be the responsibility of private parties including the HOA or the adjacent property owner.

9. Notices. Any notice or other communication required or permitted to be given under this Agreement will be in writing and will be deemed to have been given if (1) delivered to the party at the address set forth below during normal business hours, (2) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, with sufficient postage, or (3) given to a recognized and reputable overnight delivery service, to the address set forth below, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section.

To City:  
City Manager  
City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

To Owner:  
c/o Chris Kemmerly  
2492 E. River Road  
Tucson, Arizona 85718

9.1 Notices Received. Notices will be deemed received (1) when delivered to the party, (2) three business days after being sent by U.S. Mail, certified and return receipt requested, properly addressed, with sufficient postage, or (3) the following business day after being

given to a recognized and reputable overnight delivery service.

10. General Provisions.

10.1 Further Assurances. Each party, promptly upon the request of the other, will take such further actions and will execute, acknowledge and deliver to the other any and all further instruments as may be necessary or proper to carry out the purpose and intent of this Agreement.

10.2 Successors and Assigns. All of the provisions hereof will inure to the benefit of and be binding upon the successors and assigns of the parties hereto pursuant to A.R.S. § 9-500.05(D), except as provided below. Owner's rights and obligations hereunder may only be assigned to a person or entity that has acquired the Property or a portion thereof and only by a written instrument, recorded in the official records of Coconino County, Arizona, expressly assigning such rights and obligations. All rights and obligations of the Owner under this Agreement will constitute covenants that run with the land and will be binding on all of the Owner's respective successors and assigns, except as provided in Section 1.4.

10.2.1 Notwithstanding the foregoing, the City agrees that Owner's ownership, operation, and maintenance obligations provided by this Agreement may be assigned to the HOA or other association to be established by Owner. Owner individually agrees to provide the City with written notice of any assignment of an Owner's rights or obligations within a reasonable period of time following such assignment.

10.2.2 Notwithstanding any other provisions of this Agreement, Owner may assign all or part of its rights and duties under this Agreement to any financial institution from which such Owner has borrowed funds for developing the Property or a portion thereof.

10.3 Entire Agreement. This Agreement contains the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes any prior written or oral understandings or agreements between the parties or the predecessors or prior owners of all or portions of the Project or the Property.

- 10.4 Modification of Agreement. This Agreement may be amended at any time by written amendment executed by and between the City and the Owner of the portion of the Property which is the subject of any such amendment. Any other Owner of any portion of the Property need not execute any such amendment for any such amendment to be effective, so long as such amendment does not alter the Applicable Rules for any portion of the Property owned by others. Where the amendment alters the Applicable Rules for Property owned by another party, that Owner must be a party to that amendment. All amendments to this Agreement must be recorded in the official records of Coconino County, Arizona, within ten (10) days following execution, as required by A.R.S. § 9-500.05(D).
- 10.5 Default. Failure of a party to perform a material obligation of this Agreement shall constitute a breach by that party of this Agreement and, if the breach is not cured within thirty (30) days after written notice thereof from the other party (the "Cure Period"), shall constitute a default under this Agreement provided; however, that if the failure is such that more than thirty (30) days would be reasonably required to perform such action or comply with any term or provision thereof then the breaching party shall have such additional time as may be necessary to perform or comply so long as the party commences performance or compliance within said 30 day period and diligently proceeds to complete such performance or fulfill such obligation. In the event a breach is not cured within the Cure Period, the non-defaulting party shall have all the rights and remedies that may be available under law or equity, including the right to institute an action for damages. Any Owner not in default shall not be liable under this Section for the default of any other Owner.
- 10.6 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Agreement. Nothing in this Agreement shall constitute or be deemed to be a waiver by an Owner of its right to request future rezoning or changes in development standards for all or any portion(s) of the Property pursuant to City procedures and requirements existing at the time of the request. Nothing in this Agreement shall

be deemed to be a waiver by the City of the right to act, by approval or denial, on such rezoning or change. Further, nothing in this Agreement shall constitute or be deemed to be a waiver or relinquishment by an Owner of its rights to continue nonconforming uses of all or any portion(s) of the Property which may exist, or have existed, as of the date of this Agreement, subject to legal principles applicable to such non-conforming uses.

- 10.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which will constitute an original, but all of which will constitute one and the same agreement.
- 10.8 Terms. Common nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the person may in the context require; and the word "person" or "party" will include a corporation, limited liability company, firm, partnership, proprietorship, or other form of association.
- 10.9 Descriptive Headings. The descriptive headings throughout this Agreement are for convenience and reference only, and the words contained therein will in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.
- 10.10 Construction of Agreement. This Agreement has been arrived at by negotiation and will not be construed against either party or against the party who prepared the last draft.
- 10.11 Recordation and Effect. This Agreement will be recorded by the City in its entirety, inclusive of all exhibits, in the official records of Coconino County, Arizona, as required by A.R.S. § 9-500.05(D).
- 10.12 Governing Law. This Agreement and the rights of the parties shall be governed by and construed in accordance with the laws of the State of Arizona.
- 10.13 **Cancellation for Conflict of Interest.** **This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.**

- 10.14 Time of the Essence. Time is of the essence in implementing the terms of this Agreement.
- 10.15 Authorization. The execution and performance of this Agreement has been duly authorized by all necessary laws, resolutions, or corporate actions of the respective parties. The parties to this Agreement represent and warrant that the persons executing this Agreement have full authority to bind the respective parties.
- 10.16 Severability. If any provision or provisions of this Agreement, or the application thereof to any person or circumstance, is determined to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is so determined invalid or unenforceable, will not be affected thereby, and each provision hereof will be valid and will be enforced to the fullest extent permitted by law.
- 10.17 Exhibits. All exhibits attached hereto are incorporated herein by reference as though fully set forth herein.
- 10.18 Dispute Resolution. If a dispute arises out of or relates to this Agreement and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure.
- 10.18.1 Commencement of Mediation. Either party may refer the dispute to mediation by sending by U.S. mail, certified and return receipt requested, to the other party or parties a written notice (the "Mediation Notice") calling on the other party or parties to proceed to mediation. The party or parties who have received a Mediation Notice will contact the party calling for mediation 7 days from receipt of the Mediation Notice to confirm receipt of the Mediation Notice and to begin the mediator selection process.
- 10.18.2 Mediator Selection. Unless the parties agree otherwise, the parties will select the mediator(s) from the roster of attorney mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. If the parties are unable to agree upon a mediator within 10 business days of the confirmation of

receipt of Mediation Notice, each party will independently inform the Director of the Alternative Dispute Resolution Program of the Coconino County Superior Court (the "Director") of three attorney mediators from that roster that are acceptable to the party, and further, inform the Director of any preference as to matters such as whether co-mediation is preferable, mediation style, subject matter expertise, or other factors pertinent to the case. The Director will then select one or more attorney mediators from the parties' lists or such other attorney mediator (s) from the above noted roster as the Director may deem, in the Director's sole discretion, appropriate under the circumstances.

10.18.3 Fees and Costs. Each party agrees to bear its own fees and costs in mediation. The parties will enter into a written agreement with the mediator(s) regarding the mediator(s)' fees and expenses before the first mediation session. The parties will share equally the mediators' fees and mediation expenses.

10.18.4 Subsequent or Contemporaneous Contracts. The parties will include this provision in all subsequent or contemporaneous contracts relative to this matter, absent specific written agreement of the parties otherwise.

10.18.5 Participation in Mediation. The parties agree to encourage participation in mediation by all relevant parties. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation.

10.18.6 Waiver. This section does not constitute a waiver of the parties' rights to arbitrate or initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

10.19 Venue and Attorneys Fees. Except as otherwise agreed by the parties, any litigation brought by either party against the other to enforce the provisions of this Agreement must be filed in the Coconino County Superior Court or in the United States District Court for the District of Arizona, if appropriate under 28 U.S.C. § 1331. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in the action will be

entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party, as well as expenses incurred in connection with the prosecution or defense of such action. For purposes of this Agreement, the term "attorneys' fees" or "attorneys' fees and costs" will mean the reasonable fees and expenses of in-house and outside counsel to the parties hereto, which may include reasonable printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and other persons performing services under the supervision of an attorney, and the reasonable costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding. The provisions of this Section will survive the entry of any judgment, and will not merge, or be deemed to have merged, into any judgment.

- 10.20 Negation of Partnership. The parties specifically acknowledge that the Project will be developed as private property, that no party is acting as the agent of any other party in any respect, and that each party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. None of the terms or provisions of this Agreement are intended to create a partnership or other joint enterprise between the parties.
- 10.21 No Obligation to Develop Property. Except as expressly set forth in this Agreement, neither the City nor Owner will be required to complete any part or all of the development of the Property.
- 10.22. No Third Party Beneficiaries. The City and Owner acknowledge and agree that the terms, provisions, and conditions of this Agreement are for the sole benefit of, and may be enforced solely by, the City and Owner, and none of the terms, provisions, conditions, and obligations are for the benefit of or may be enforced by any third party.
- 10.23 Compliance with All Laws. Subject to the terms of this Agreement, Owner will comply with all applicable Federal, State, County and City laws, regulations and policies.
- 10.24 Recitals. The Recitals set forth above are incorporated in this Agreement by reference.

11. Waiver of Claim for Diminution in Value. Owner hereby waives and fully releases any and all financial loss, injury, claims or causes of action that the Owner may have, now or in the future, for any "diminution in value" and for any "just compensation" under the Private Property Rights Protection Act, codified in A.R.S. §§ 12-1131 through 12-1138, (the "Act") and in connection with the application of the City's existing land use laws regarding the Property (collectively, the "Laws"). This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under the Laws with regard to the subject Property. Owner, for itself and any future owner of any portion of the Property, hereby waives and releases any and all claims, causes of actions, demands, losses and expenses, including attorney's fees and litigation costs, that may be asserted by or may result from any of the present or future owners of any interest in the Property seeking potential compensation, damages, attorney's fees or costs under the Act that they may have, as a result of the application of the Laws upon the Property.
12. Estoppel Certificate. Any Owner may request of the City Manager, and the City Manager shall, within thirty (30) calendar days, respond and certify by written instrument to the requesting party that (a) the Master Plan is unmodified and in full force and effect, or if there have been modifications, that the Master Plan is in full force and effect as modified, stating the nature and date of such modification; (b) there is or is not a default under the Master Plan or this Agreement and the scope and nature of the default; and (c) the City has or does not have any existing or pending legal or equitable claims against any party with an ownership interest in the Property. In the event an Owner has not received an estoppel certificate within thirty (30) days from the date of the request, then in such event, that Owner shall be entitled to prepare an estoppels certificate and deliver the certificate to the City Manager, and such estoppel certificate shall be binding upon the City.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed by its duly authorized representatives, and the other Owner has signed the same on or as of the day and year first above written.



City of Flagstaff,  
an Arizona municipal corporation  
City

Miramonte Arizona, LLC,  
an Arizona limited  
liability company  
Owner

\_\_\_\_\_  
\_\_\_\_\_, Mayor

By: \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

STATE OF ARIZONA       )  
COUNTY OF COCONINO    )

ACKNOWLEDGMENT

On this \_\_\_\_ day of \_\_\_\_\_, 2012, before me, a Notary Public, personally appeared \_\_\_\_\_, Mayor of the City of Flagstaff, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same on behalf of the City of Flagstaff, for the purposes therein contained.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
  
\_\_\_\_\_

STATE OF ARIZONA       )  
COUNTY OF PIMA        )

ACKNOWLEDGMENT

On this \_\_\_\_ day of \_\_\_\_\_, 2012, before me a Notary Public, personally appeared \_\_\_\_\_, know to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of Miramonte Arizona, LLC, an Arizona limited liability company, for the purposes therein contained.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
  
\_\_\_\_\_

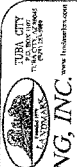
# **Exhibit A**





Case 9 Map 72A

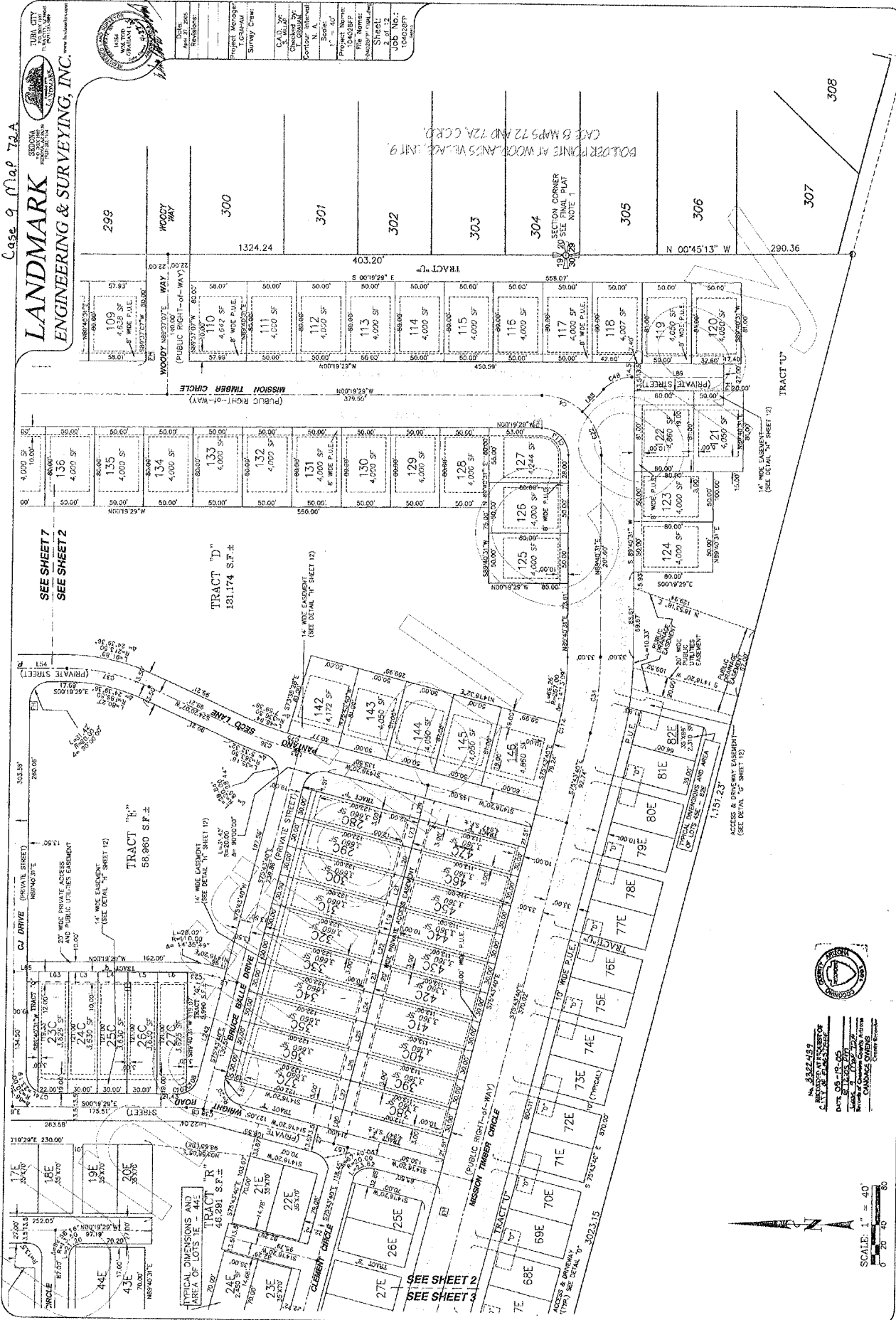
**LANDMARK**  
ENGINEERING & SURVEYING, INC.



RIBA CITY  
1000 N. 10th St.  
Tulsa, Oklahoma 74103  
918.438.1111  
www.landmarkeng.com



DATE: 05-13-09  
BY: T. Chatham  
PROJECT: CASE 9 MAP 72A  
SHEET: 2 of 12  
JOB NO.: 1000000000





SEE SHEET 4  
SEE SHEET 5

INSTRUMENT No. 3229602  
APN 112-01-018  
C.O.R.O.  
PRESIDIO WEST, LLC

TRACT "M"  
FUTURE CHURCH SITE  
120-458 S.P. 4

## TRACT "C"

248.50'

NORTHERLY R/W LINE (INTERSTATE 40 WESTBOUND) I-40

SEE SHEET 3  
SEE SHEET 4

19 QUARTER CORNER

30

589°40'04"W 1325.79'

3322439

SHEET 4 OF 10

NO. 2322439  
RECORDED AT REQUEST OF  
CITY OF FLAGSTAFF  
08-05-09-03  
2:12:08 PM  
2009 MAY 12  
Records of Churches, Church Activities  
CANDIDATE OWNERS

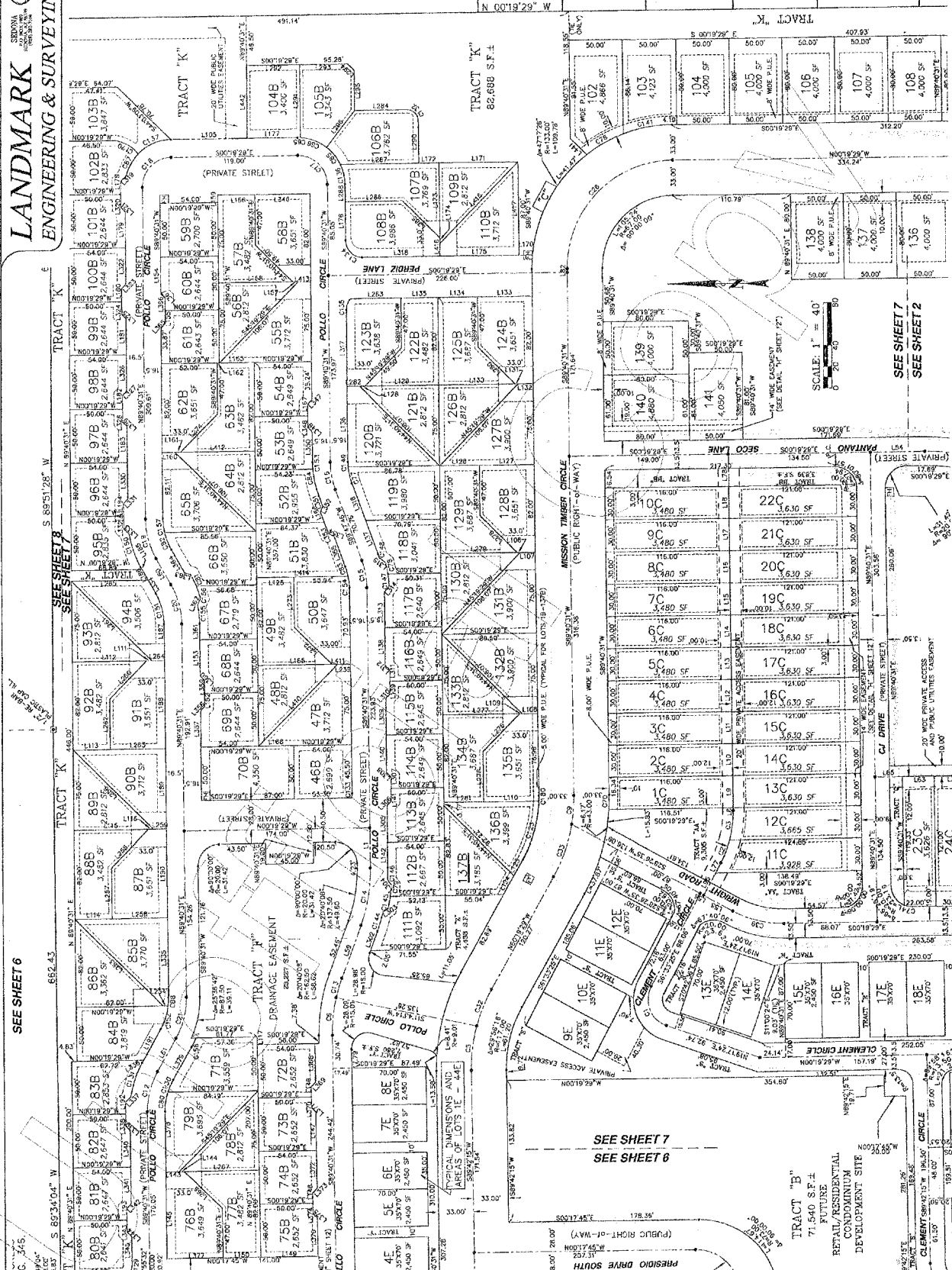








Date:	Aug 27, 2006
Revision:	1
Project Manager:	J. GONZALEZ
Survey Crew:	CAD by S. VALDES Checked by J. GONZALEZ Contour Interval: 1' 0" N. A. Scale: 1" = 40'
Project Name:	104028FFP
File Name:	104028FFP.dwg
Sheet:	7 of 12
Job No.:	104028FFP

[illegible]

LANDMARK  
ENGINEERING & SURVEYING

**TUBA CITY**  
P.O. BOX 1187  
TUBA CITY, AZ 86045  
PH: 214-490-0000  
[www.311andmore.com](http://www.311andmore.com)



E 1/4 CORNER 19-20  
SECTION 19  
SITE AND SHED  
NOTE: AND SHEET  
INDEX ON SHEET 1

100  
 90  
 80  
 70  
 60  
 50  
 40  
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 20  
 10  
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APN 112-01-007  
DKT. 1376, PG. 478

SEE SHEET 8  
SEE SHEET 9

WILLOW HILLS  
APR 112-01-012A  
DKT. 3194, PG. 684

KOVAC  
APN 112-01-012C  
DKT. 1418, PG. 183

SCALE: 1" = 40'

OF PAIS DEL NORTE, PICO DEL MONTE  
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OFF UPON DEVELOPMENT OF THE  
EL NUMBER 112-01-012C, AND  
THE CONDITIONS IN THE ESCROW  
PURSUANT TO SEPARATE ESCROW No.  
Q1-1 AT FIDELITY NATIONAL TITLE  
COMPANY, 2409 NORTH 4TH STREET, SUITE  
ARIZONA.

SS & EGRESS EASEMENT GRANTED IN DKT. 859, PG.  
D.K.T. 862, PG. 771 AND FURTHER GRANTED IN DKT.  
C.R.O. IS ABANDONED BY RECORDATION OF THIS PLAT  
IT NO. 3318619 AND NO. 3318620.

SS, EGRESS & UTILITY EASEMENT GRANTED IN DKT. 862,  
O., IS ABANDONED BY RECORDATION OF THIS PLAT AND  
3318619, NO. 3318620 AND

SEE SHEET 6

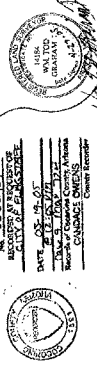
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SHEET: 8 OF 12

3322439

**LANDMARK**  
ENGINEERING & SURVEYING, INC.

TRIP CITY  
SEMINA  
TULSA COUNTY  
OKLAHOMA

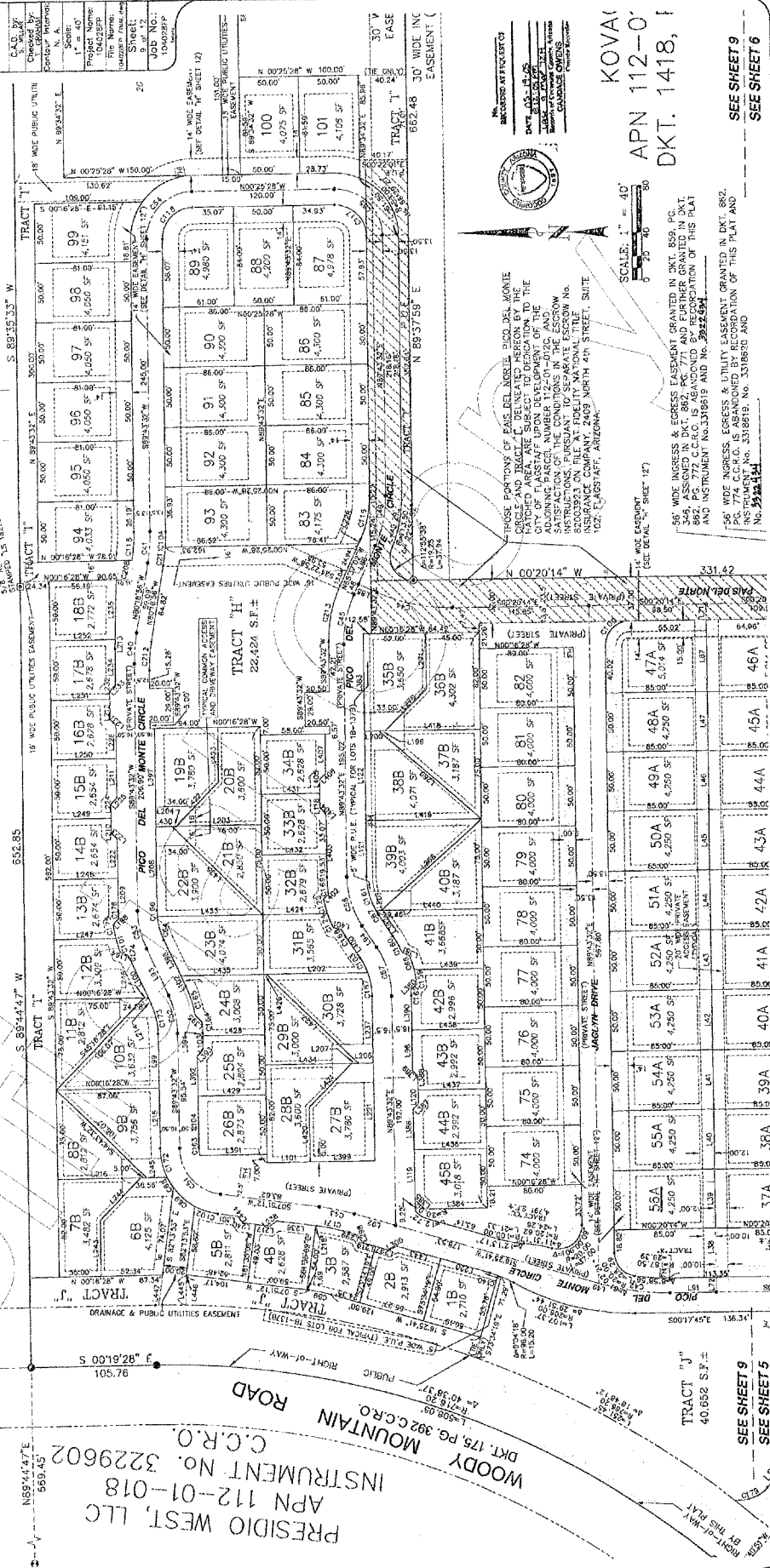


SEE SHEET 8  
SEE SHEET 9

EASTERN PIONEER, LLC  
APN 112-07-001  
DKT. 3276, PG. 325

SKRO  
APN 112-  
DKT. 1376

PRESIDIO WEST, LLC  
INSTRUMENT NO. 3229602  
APN 112-01-018  
C.C.R.O.



SEE SHEET 9  
SEE SHEET 6

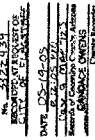
SEE SHEET 9  
SEE SHEET 5

SHEET 9 OF 12

332349







CURVE	DELTA	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH
C101	71.57	66.50	12.21	572.14	12.21
C102	71.57	66.50	21.15	572.14	21.15
C103	71.57	66.50	30.10	572.14	30.10
C104	43.07	43.07	13.87	581.53	13.87
C105	50.02	45.00	33.53	577.302	33.53
C106	50.02	45.00	2.89	577.302	2.89
C107	50.02	45.00	17.57	577.302	17.57
C108	50.02	45.00	26.52	577.302	26.52
C109	30.56	30.56	11.94	577.302	11.94
C110	30.56	30.56	20.88	577.302	20.88
C111	64.52	40.00	22.36	580.14	22.36
C112	64.52	40.00	31.31	580.14	31.31
C113	64.52	40.00	40.26	580.14	40.26
C114	64.52	40.00	49.21	580.14	49.21
C115	24.32	86.50	7.52	572.40	7.52
C116	24.32	86.50	16.47	572.40	16.47
C117	80.70	70.00	23.64	581.41	23.64
C118	80.70	70.00	32.59	581.41	32.59
C119	80.70	70.00	41.54	581.41	41.54
C120	80.70	70.00	50.49	581.41	50.49
C121	43.02	161.50	31.30	577.02	31.30
C122	43.02	161.50	40.25	577.02	40.25
C123	43.02	161.50	49.20	577.02	49.20
C124	43.02	161.50	58.15	577.02	58.15
C125	70.13	66.50	12.21	572.14	12.21
C126	70.13	66.50	21.16	572.14	21.16
C127	70.13	66.50	30.11	572.14	30.11
C128	43.07	43.07	13.87	581.53	13.87
C129	50.02	45.00	33.53	577.302	33.53
C130	50.02	45.00	2.89	577.302	2.89
C131	50.02	45.00	17.57	577.302	17.57
C132	50.02	45.00	26.52	577.302	26.52
C133	30.56	30.56	11.94	577.302	11.94
C134	30.56	30.56	20.88	577.302	20.88
C135	64.52	40.00	22.36	580.14	22.36
C136	64.52	40.00	31.31	580.14	31.31
C137	64.52	40.00	40.26	580.14	40.26
C138	64.52	40.00	49.21	580.14	49.21
C139	24.32	86.50	7.52	572.40	7.52
C140	24.32	86.50	16.47	572.40	16.47
C141	80.70	70.00	23.64	581.41	23.64
C142	80.70	70.00	32.59	581.41	32.59
C143	80.70	70.00	41.54	581.41	41.54
C144	80.70	70.00	50.49	581.41	50.49
C145	43.02	161.50	31.30	577.02	31.30
C146	43.02	161.50	40.25	577.02	40.25
C147	43.02	161.50	49.20	577.02	49.20
C148	43.02	161.50	58.15	577.02	58.15
C149	70.13	66.50	12.21	572.14	12.21
C150	70.13	66.50	21.16	572.14	21.16
C151	70.13	66.50	30.11	572.14	30.11
C152	43.07	43.07	13.87	581.53	13.87
C153	50.02	45.00	33.53	577.302	33.53
C154	50.02	45.00	2.89	577.302	2.89
C155	50.02	45.00	17.57	577.302	17.57
C156	50.02	45.00	26.52	577.302	26.52
C157	30.56	30.56	11.94	577.302	11.94
C158	30.56	30.56	20.88	577.302	20.88
C159	64.52	40.00	22.36	580.14	22.36
C160	64.52	40.00	31.31	580.14	31.31
C161	64.52	40.00	40.26	580.14	40.26
C162	64.52	40.00	49.21	580.14	49.21
C163	24.32	86.50	7.52	572.40	7.52
C164	24.32	86.50	16.47	572.40	16.47
C165	80.70	70.00	23.64	581.41	23.64
C166	80.70	70.00	32.59	581.41	32.59
C167	80.70	70.00	41.54	581.41	41.54
C168	80.70	70.00	50.49	581.41	50.49
C169	43.02	161.50	31.30	577.02	31.30
C170	43.02	161.50	40.25	577.02	40.25
C171	43.02	161.50	49.20	577.02	49.20
C172	43.02	161.50	58.15	577.02	58.15
C173	70.13	66.50	12.21	572.14	12.21
C174	70.13	66.50	21.16	572.14	21.16
C175	70.13	66.50	30.11	572.14	30.11
C176	43.07	43.07	13.87	581.53	13.87
C177	50.02	45.00	33.53	577.302	33.53
C178	50.02	45.00	2.89	577.302	2.89
C179	50.02	45.00	17.57	577.302	17.57
C180	50.02	45.00	26.52	577.302	26.52
C181	30.56	30.56	11.94	577.302	11.94
C182	30.56	30.56	20.88	577.302	20.88
C183	64.52	40.00	22.36	580.14	22.36
C184	64.52	40.00	31.31	580.14	31.31
C185	64.52	40.00	40.26	580.14	40.26
C186	64.52	40.00	49.21	580.14	49.21
C187	24.32	86.50	7.52	572.40	7.52
C188	24.32	86.50	16.47	572.40	16.47
C189	80.70	70.00	23.64	581.41	23.64
C190	80.70	70.00	32.59	581.41	32.59
C191	80.70	70.00	41.54	581.41	41.54
C192	80.70	70.00	50.49	581.41	50.49
C193	43.02	161.50	31.30	577.02	31.30
C194	43.02	161.50	40.25	577.02	40.25
C195	43.02	161.50	49.20	577.02	49.20
C196	43.02	161.50	58.15	577.02	58.15
C197	70.13	66.50	12.21	572.14	12.21
C198	70.13	66.50	21.16	572.14	21.16
C199	70.13	66.50	30.11	572.14	30.11
C200	43.07	43.07	13.87	581.53	13.87
C201	50.02	45.00	33.53	577.302	33.53
C202	50.02	45.00	2.89	577.302	2.89
C203	50.02	45.00	17.57	577.302	17.57
C204	50.02	45.00	26.52	577.302	26.52
C205	30.56	30.56	11.94	577.302	11.94
C206	30.56	30.56	20.88	577.302	20.88
C207	64.52	40.00	22.36	580.14	22.36
C208	64.52	40.00	31.31	580.14	31.31
C209	64.52	40.00	40.26	580.14	40.26
C210	64.52	40.00	49.21	580.14	49.21
C211	24.32	86.50	7.52	572.40	7.52
C212	24.32	86.50	16.47	572.40	16.47
C213	80.70	70.00	23.64	581.41	23.64
C214	80.70	70.00	32.59	581.41	32.59
C215	80.70	70.00	41.54	581.41	41.54
C216	80.70	70.00	50.49	581.41	50.49
C217	43.02	161.50	31.30	577.02	31.30
C218	43.02	161.50	40.25	577.02	40.25
C219	43.02	161.50	49.20	577.02	49.20
C220	43.02	161.50	58.15	577.02	58.15
C221	70.13	66.50	12.21	572.14	12.21
C222	70.13	66.50	21.16	572.14	21.16
C223	70.13	66.50	30.11	572.14	30.11
C224	43.07	43.07	13.87	581.53	13.87
C225	50.02	45.00	33.53	577.302	33.53
C226	50.02	45.00	2.89	577.302	2.89
C227	50.02	45.00	17.57	577.302	17.57
C228	50.02	45.00	26.52	577.302	26.52
C229	30.56	30.56	11.94	577.302	11.94
C230	30.56	30.56	20.88	577.302	20.88
C231	64.52	40.00	22.36	580.14	22.36
C232	64.52	40.00	31.31	580.14	31.31
C233	64.52	40.00	40.26	580.14	40.26
C234	64.52	40.00	49.21	580.14	49.21
C235	24.32	86.50	7.52	572.40	7.52
C236	24.32	86.50	16.47	572.40	16.47
C237	80.70	70.00	23.64	581.41	23.64
C238	80.70	70.00	32.59	581.41	32.59
C239	80.70	70.00	41.54	581.41	41.54
C240	80.70	70.00	50.49	581.41	50.49
C241	43.02	161.50	31.30	577.02	31.30
C242	43.02	161.50	40.25	577.02	40.25
C243	43.02	161.50	49.20	577.02	49.20
C244	43.02	161.50	58.15	577.02	58.15
C245	70.13	66.50	12.21	572.14	12.21
C246	70.13	66.50	21.16	572.14	21.16
C247	70.13	66.50	30.11	572.14	30.11
C248	43.07	43.07	13.87	581.53	13.87
C249	50.02	45.00	33.53	577.302	33.53
C250	50.02	45.00	2.89	577.302	2.89
C251	50.02	45.00	17.57	577.302	17.57
C252	50.02	45.00	26.52	577.302	26.52
C253	30.56	30.56	11.94	577.302	11.94
C254	30.56	30.56	20.88	577.302	20.88
C255	64.52	40.00	22.36	580.14	22.36
C256	64.52	40.00	31.31	580.14	31.31
C257	64.52	40.00	40.26	580.14	40.26
C258	64.52	40.00	49.21	580.14	49.21
C259	24.32	86.50	7.52	572.40	7.52
C260	24.32	86.50	16.47	572.40	16.47
C261	80.70	70.00	23.64	581.41	23.64
C262	80.70	70.00	32.59	581.41	32.59
C263	80.70	70.00	41.54	581.41	41.54
C264	80.70	70.00	50.49	581.41	50.49
C265	43.02	161.50	31.30	577.02	31.30
C266	43.02	161.50	40.25	577.02	40.25
C267	43.02	161.50	49.20	577.02	49.20
C268	43.02	161.50	58.15	577.02	58.15
C269	70.13	66.50	12.21	572.14	12.21
C270	70.13	66.50	21.16	572.14	21.16
C271	70.13	66.50	30.11	572.14	30.11
C272	43.07	43.07	13.87	581.53	13.87
C273	50.02	45.00	33.53	577.302	33.53
C274	50.02	45.00	2.89	577.302	2.89
C275	50.02	45.00	17.57	577.302	17.57
C276	50.02	45.00	26.52	577.302	26.52
C277	30.56	30.56	11.94	577.302	11.94
C278	30.56	30.56	20.88	577.302	20.88
C279	64.52	40.00	22.36	580.14	22.36
C280	64.52	40.00	31.31	580.14	31.31
C281	64.52	40.00	40.26	580.14	40.26
C282	64.52	40.00	49.21	580.14	49.21
C283	24.32	86.50	7.52	572.40	7.52
C284	24.32	86.50	16.47	572.40	16.47
C285	80.70	70.00	23.64	581.41	23.64
C286	80.70	70.00	32.59	581.41	32.59
C287	80.70	70.00	41.54	581.41	41.54
C288	80.70	70.00	50.49	581.41	50.49
C289	43.02	161.50	31.30	577.02	31.30
C290	43.02	161.50	40.25	577.02	40.25
C291	43.02	161.50	49.20	577.02	49.20
C292	43.02	161.50	58.15	577.02	58.15
C293	70.13	66.50	12.21	572.14	12.21
C294	70.13	66.50	21.16	572.14	21.16
C295	70.13	66.50	30.11	572.14	30.11

CURVE	DELTA	PAYLOAD	CURVE TABLE	CHORD BEAMS & LENGTH
C1	593.42	26.80	44.12	38.20
C2	124.07	166.68	72.35	38.20
C3	100.00	150.00	55.17	38.20
C4	100.00	150.00	45.17	38.20
C5	132.45	185.00	55.00	38.20
C6	132.45	185.00	45.00	38.20
C7	107.74	157.50	72.05	38.20
C8	107.74	157.50	62.05	38.20
C9	107.74	157.50	52.05	38.20
C10	107.74	157.50	42.05	38.20
C11	107.74	157.50	32.05	38.20
C12	107.74	157.50	22.05	38.20
C13	107.74	157.50	12.05	38.20
C14	107.74	157.50	2.05	38.20
C15	107.74	157.50	0.05	38.20
C16	107.74	157.50	0.05	38.20
C17	107.74	157.50	0.05	38.20
C18	107.74	157.50	0.05	38.20
C19	107.74	157.50	0.05	38.20
C20	107.74	157.50	0.05	38.20
C21	107.74	157.50	0.05	38.20
C22	107.74	157.50	0.05	38.20
C23	107.74	157.50	0.05	38.20
C24	107.74	157.50	0.05	38.20
C25	107.74	157.50	0.05	38.20
C26	107.74	157.50	0.05	38.20
C27	107.74	157.50	0.05	38.20
C28	107.74	157.50	0.05	38.20
C29	107.74	157.50	0.05	38.20
C30	107.74	157.50	0.05	38.20
C31	107.74	157.50	0.05	38.20
C32	107.74	157.50	0.05	38.20
C33	107.74	157.50	0.05	38.20
C34	107.74	157.50	0.05	38.20
C35	107.74	157.50	0.05	38.20
C36	107.74	157.50	0.05	38.20
C37	107.74	157.50	0.05	38.20
C38	107.74	157.50	0.05	38.20
C39	107.74	157.50	0.05	38.20
C40	107.74	157.50	0.05	38.20
C41	107.74	157.50	0.05	38.20
C42	107.74	157.50	0.05	38.20
C43	107.74	157.50	0.05	38.20
C44	107.74	157.50	0.05	38.20
C45	107.74	157.50	0.05	38.20
C46	107.74	157.50	0.05	38.20
C47	107.74	157.50	0.05	38.20
C48	107.74	157.50	0.05	38.20
C49	107.74	157.50	0.05	38.20
C50	107.74	157.50	0.05	38.20
C51	107.74	157.50	0.05	38.20
C52	107.74	157.50	0.05	38.20
C53	107.74	157.50	0.05	38.20
C54	107.74	157.50	0.05	38.20
C55	107.74	157.50	0.05	38.20
C56	107.74	157.50	0.05	38.20
C57	107.74	157.50	0.05	38.20
C58	107.74	157.50	0.05	38.20
C59	107.74	157.50	0.05	38.20
C60	107.74	157.50	0.05	38.20
C61	107.74	157.50	0.05	38.20
C62	107.74	157.50	0.05	38.20
C63	107.74	157.50	0.05	38.20
C64	107.74	157.50	0.05	38.20
C65	107.74	157.50	0.05	38.20
C66	107.74	157.50	0.05	38.20
C67	107.74	157.50	0.05	38.20
C68	107.74	157.50	0.05	38.20
C69	107.74	157.50	0.05	38.20
C70	107.74	157.50	0.05	38.20
C71	107.74	157.50	0.05	38.20
C72	107.74	157.50	0.05	38.20
C73	107.74	157.50	0.05	38.20
C74	107.74	157.50	0.05	38.20
C75	107.74	157.50	0.05	38.20
C76	107.74	157.50	0.05	38.20

# CURVE TABLES

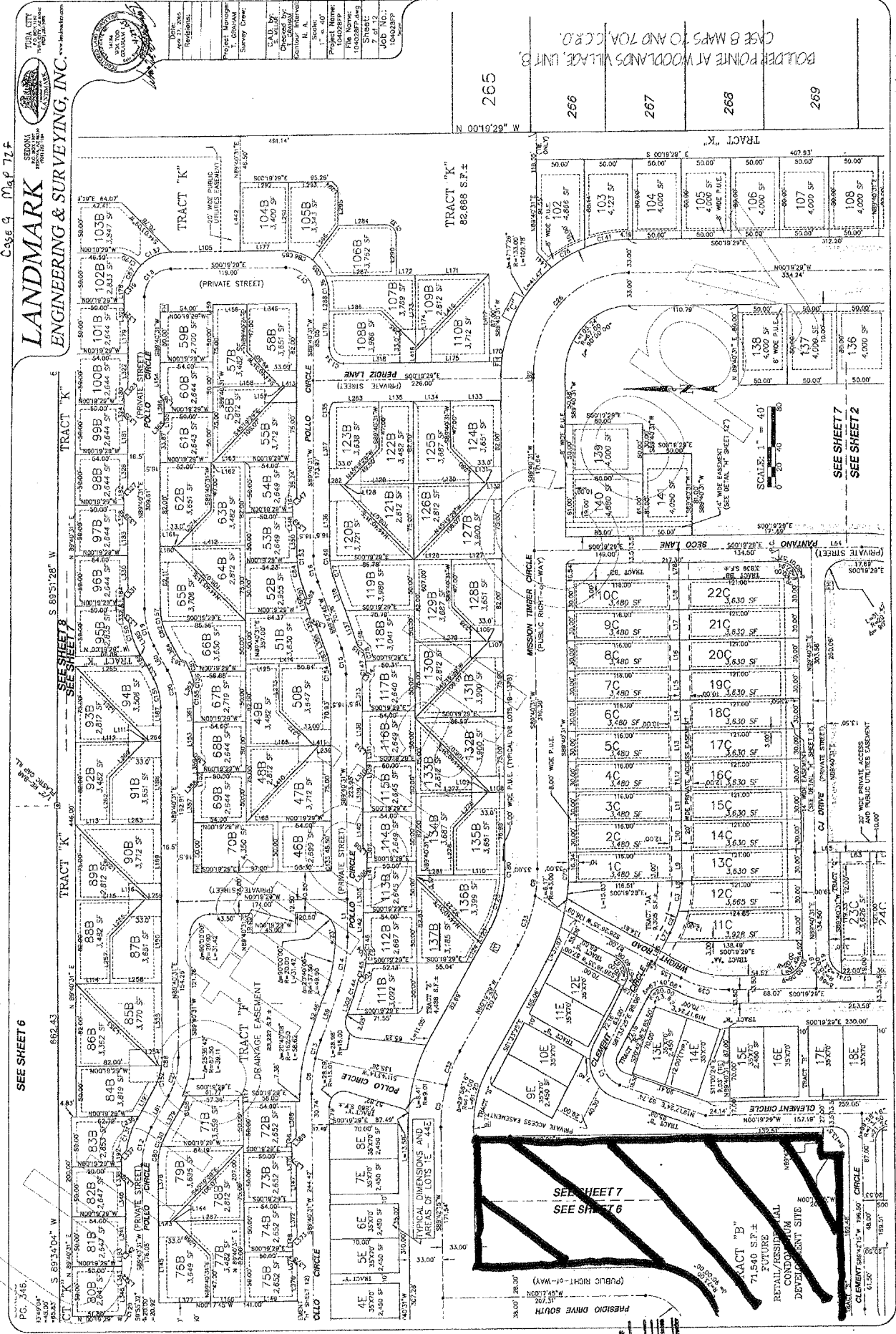




# **Exhibit B**





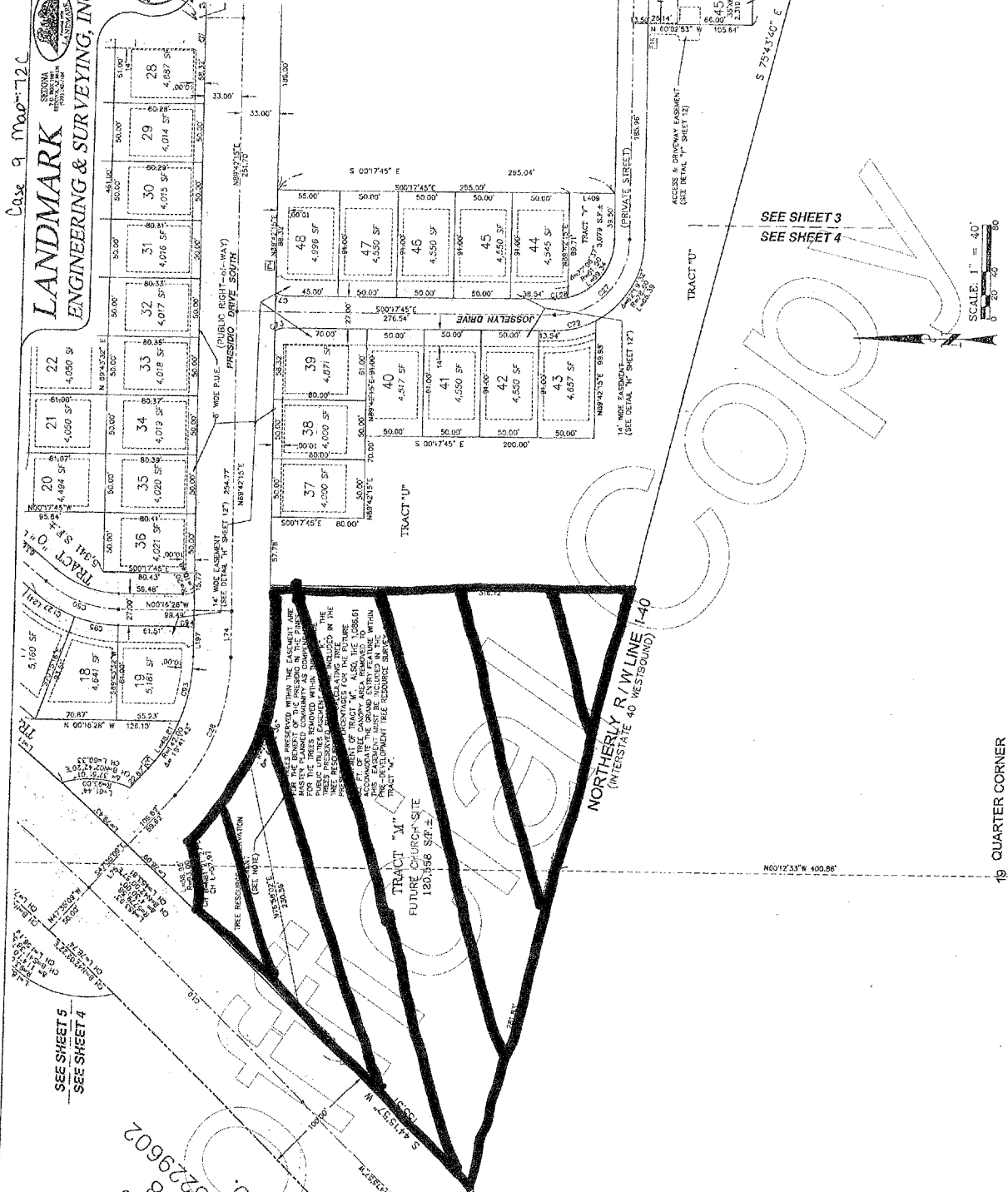


Case 9 Map-72C

**LANDMARK**  
ENGINEERING & SURVEYING, INC.

TUBA CITY, ARIZONA  
104028FP  
104028FP  
104028FP

Project Manager	Survey Crew
Checked by	Scale
Contract Interval	Project Name
1" = 40'	104028FP
1" = 40'	File Name
1" = 40'	Survey Date
1" = 40'	Sheet No.
1" = 40'	Job No.
1" = 40'	104028FP
1" = 40'	104028FP



SEE SHEET 5  
SEE SHEET 4

SEE SHEET 3  
SEE SHEET 4

SCALE 1" = 40'

19 QUARTER CORNER

S89°40'04"W 1325.79'

PRESIDIO WEST, LLC  
APN 112-01-018  
INSTRUMENT NO. 3229602  
C.O.R.O.



APN 112-01-018  
INSTRUMENT NO. 3229602  
C.O.R.O.

Page 3 of 3



# **Exhibit C**





Description of Public Improvements to be Completed  
Using the  
Remaining Penal Sum of the Subdivision Bond  
for  
Presidio in The Pines

*Prepared by City of Flagstaff Engineering Section 9/19/11*

The remaining penal sum of the subdivision improvements bond will be used to construct the public improvements summarized below. In addition, the accompanying drawing provides a visual representation of the location of the improvements described below within the Presidio in The Pines development. The improvements described below are further detailed in the approved public improvement plans dated May 2005 along with all subsequent plan revisions.

The first priority will be to complete the underground water distribution system and the sewage collection system for the entire development to the full requirements of the City of Flagstaff Engineering Standards. This will include complete leakage testing and final certification of those utilities and will allow them to be fully operable. Presently the water distribution system is approximately 75% complete and the sewage collection system is approximately 95% complete.

The second priority will be to construct a portion of the streets and associated minor drainage features with the remaining funds. Streets will be completed from both entrances to the development at Woody Mtn Road easterly through the development. Street construction will be terminated at locations shown on the accompanying drawing. The completed streets will drain into the existing stormwater detention ponds that are fully functional. The streets will be built per the approved plans and will meet all the requirements of the City of Flagstaff Engineering Standards. Included in the street sections will be curb & gutter, sidewalks on both sides, chip seal, street lights, street signs, pavement markings, and the full structural section.

**Water System Improvements**

- Install 8" main on Jaclyn Drive from sta 10+17 to sta 15+69, including all associated single and duplex services, gate valves & boxes, fittings, fire hydrant assemblies, and testing
- Install 8" main on Pico Del Monte Circle from sta 10+14 to sta 24+26 and from sta 9+80 to sta 11+20 and from sta 10+12 to sta 15+50 including all associated single and duplex services, gate valves & boxes, fittings, and testing
- Install 8" main on Clement Circle from sta 9+98 to sta 15 +27 and from sta 13+61 to sta 14+97 and from sta 9+95 to sta 11+10 including all associated single and duplex services, gate valves & boxes, fittings, fire hydrant assemblies, blowoff assembly, and testing

- Install 8" main on Sewer Easement E/W from sta 12+25 to sta 13+70 including all associated gate valves & boxes, fittings, and testing
- Install all associated single and duplex services on existing main on Pepita Drive from sta 10+09 to sta 17+84 including testing of existing main
- Install all associated single and duplex services on existing main on Paz De Avenida from sta 10+09 to sta 14+31 including testing of existing main
- Install all associated single and duplex services on existing main on Josselyn Drive from sta 9+99 to sta 21+64 including testing of existing main
- Test existing main on Pollo Circle from sta 10+85 to sta 21+34 and from sta 9+62 to sta 10+59
- Test existing main on Perdiz Lane from sta 10+11 to sta 12+31
- Install 8" main on Clement Circle Extension from sta 10+08 to sta 10+77 including all associated single and duplex services, gate valves & boxes, fittings, blowoff assembly, and testing
- Adjust existing valves to grade under paved streets
- Repair any water mains, services, and appurtenances that fail testing within the subdivision

### **Sewer System Improvements**

- Install 8" main on Jaclyn Drive from sta 10+79 to sta 15+65, including all associated manholes, services, and testing
- Install manholes #26, #27, #28, #29, #30, #31, and #32 on existing main on Pico Del Monte Circle
- Adjust existing manholes to grade under paved streets
- Leakage (vacuum) test all manholes within the subdivision
- Test existing main on Pepita Drive from sta 10+85 to sta 17+77
- Test existing main on Paz De Avenida from sta 10+43 to sta 14+25
- Test existing main on Josselyn Drive 10+02 to sta 12+88 and from sta 15+85 to sta 21+61
- Test existing main on Pantano Seco Lane from sta 11+45 to sta 18+65
- Test existing main on CJ Drive from sta 9+98 to sta 14+36
- Test existing main on Wright Road from sta 14+71 to sta 16+41 and from sta 11+25 to sta 13+16
- Test existing main on Clement Circle from sta 10+60 to sta 12+22 and from sta 10+02 to sta 17+41 and from 9+85 to sta 11+36
- Test existing main on Sewer Easement E/W from sta 10+54 to sta 11+95 and from sta 10+90 to sta 13+42
- Test existing main on Alley 3 from sta 10+57 to sta 14+15
- Test existing main on Alley 4 from sta 10+37 to sta 12+24
- Test existing main on Alley 5 from sta 9+98 to sta 13+68
- Test existing main on Brice Balle Drive from sta 9+98 to sta 13+68

- Test existing main on Pico Del Monte Circle from sta 15+78 to sta 23+60 and from sta 9+84 to sta 11+20 and from sta 10+29 to sta 15+45
- Remove and replace existing main on Pollo Circle from sta 19+50 to sta 20+43 including reconnecting associated services and successful testing
- Repair any sewer mains, services, and manholes that fail testing within the subdivision

### **Drainage Improvements**

- Construct small v-ditches at several locations to direct street stormwater flows into the existing detention ponds

### **Roadway Improvements**

- Remove and replace all stormwater damaged concrete including curb & gutter, valley gutters and aprons, colored concrete crosswalks on Patio Del Presidio, Pais Del Norte south of Patio Del Presidio, Presidio Drive South, Pardo Calle south of Mission Timber Circle, and Mission Timber Circle from Pardo Calle to Wright Road
- Repair stormwater damaged aggregate road base to pre-damaged condition on Patio Del Presidio, Pais Del Norte south of Patio Del Presidio, Presidio Drive South, Pardo Calle south of Mission Timber Circle, and Mission Timber Circle from Pardo Calle to Wright Road
- Remove and replace the top 3-inches of aggregate road base on Patio Del Presidio, Pais Del Norte south of Patio Del Presidio, Presidio Drive South, Pardo Calle south of Mission Timber Circle, and Mission Timber Circle from Pardo Calle to Wright Road
- Import and install all aggregate road base necessary to complete the full 13-inch section on Patio Del Presidio, Pais Del Norte south of Patio Del Presidio, Presidio Drive South, Pardo Calle south of Mission Timber Circle, and Mission Timber Circle from Pardo Calle to Wright Road
- Install 4-inch asphalt concrete section on Patio Del Presidio, Pais Del Norte south of Patio Del Presidio, Presidio Drive South, Pardo Calle south of Mission Timber Circle, and Mission Timber Circle from Pardo Calle to Wright Road
- Install chip seal on Patio Del Presidio, Pais Del Norte south of Patio Del Presidio, Presidio Drive South, Pardo Calle south of Mission Timber Circle, and Mission Timber Circle from Pardo Calle to Wright Road
- Install sidewalks on both sides including 3-inch aggregate base course (this can be the 3" ABC removed from the streets) underneath and finish grading on Patio Del Presidio, Pais Del Norte south of Patio Del Presidio, Presidio Drive South, Pardo Calle south of Mission Timber Circle, and Mission Timber Circle from Pardo Calle to Wright Road
- Install remaining curb & gutter including vertical curb median islands on Patio Del Presidio and Pais Del Norte south of Patio Del Presidio
- Install remaining handicapped sidewalk ramps, associated concrete flatwork, and aggregate road base underneath on Patio Del Presidio, Pais Del Norte south of Patio Del Presidio, Presidio Drive South, Pardo Calle south of Mission Timber Circle, and Mission Timber Circle from Pardo Calle to Wright Road

- Install remaining valley gutters and aprons on Patio Del Presidio and Pais Del Norte south of Patio Del Presidio
- Install driveways on Patio Del Presidio and Pais Del Norte south of Patio Del Presidio
- Install traffic control and street name signs on Patio Del Presidio, Pais Del Norte south of Patio Del Presidio, Presidio Drive South, Pardo Calle south of Mission Timber Circle, and Mission Timber Circle from Pardo Calle to Wright Road
- Install permanent pavement markings on Patio Del Presidio, Pais Del Norte south of Patio Del Presidio, Presidio Drive South, Pardo Calle south of Mission Timber Circle, and Mission Timber Circle from Pardo Calle to Wright Road
- Install street lights (except connection to electrical power lines) on Patio Del Presidio, Pais Del Norte south of Patio Del Presidio, Presidio Drive South, Pardo Calle south of Mission Timber Circle, and Mission Timber Circle from Pardo Calle to Wright Road
- Install survey monuments on Patio Del Presidio, Pais Del Norte south of Patio Del Presidio, Presidio Drive South, Pardo Calle south of Mission Timber Circle, and Mission Timber Circle from Pardo Calle to Wright Road
- Hydroseed all disturbed areas with City right-of-way on Patio Del Presidio, Pais Del Norte south of Patio Del Presidio, Presidio Drive South, Pardo Calle south of Mission Timber Circle, and Mission Timber Circle from Pardo Calle to Wright Road

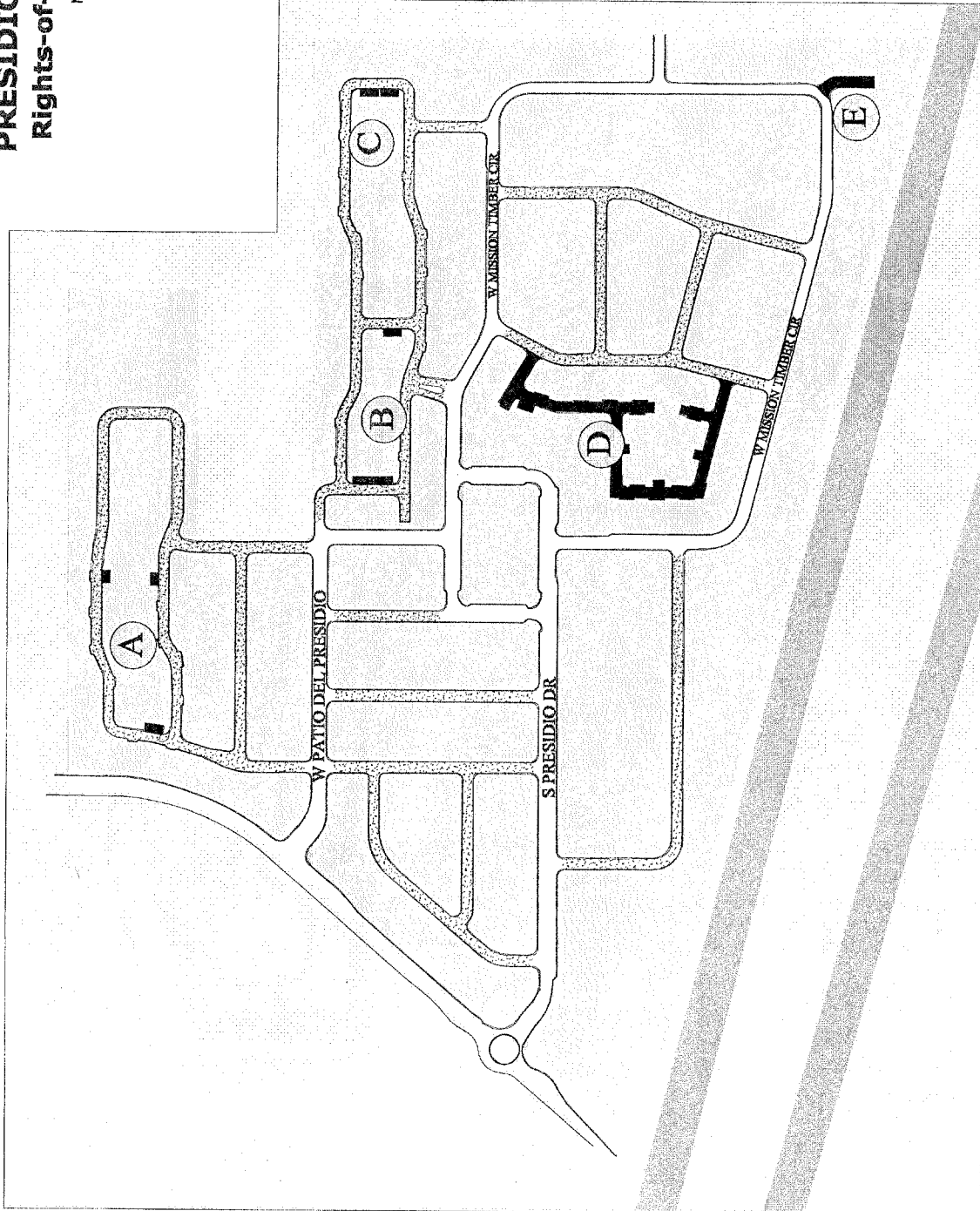
# **Exhibit D**



# PRESIDIO IN THE PINES

## Rights-of-Way Ownership

March 30, 2012

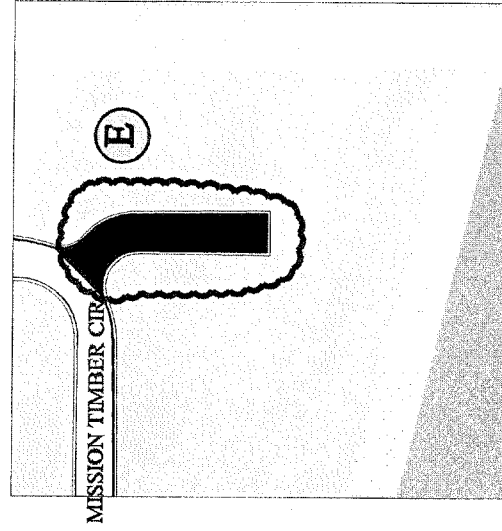
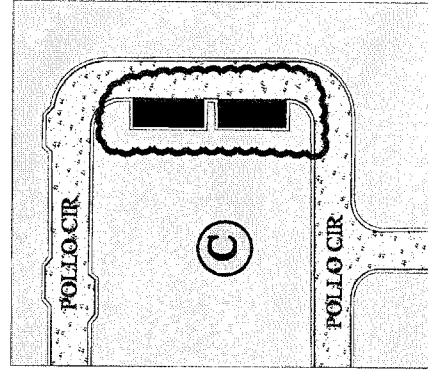
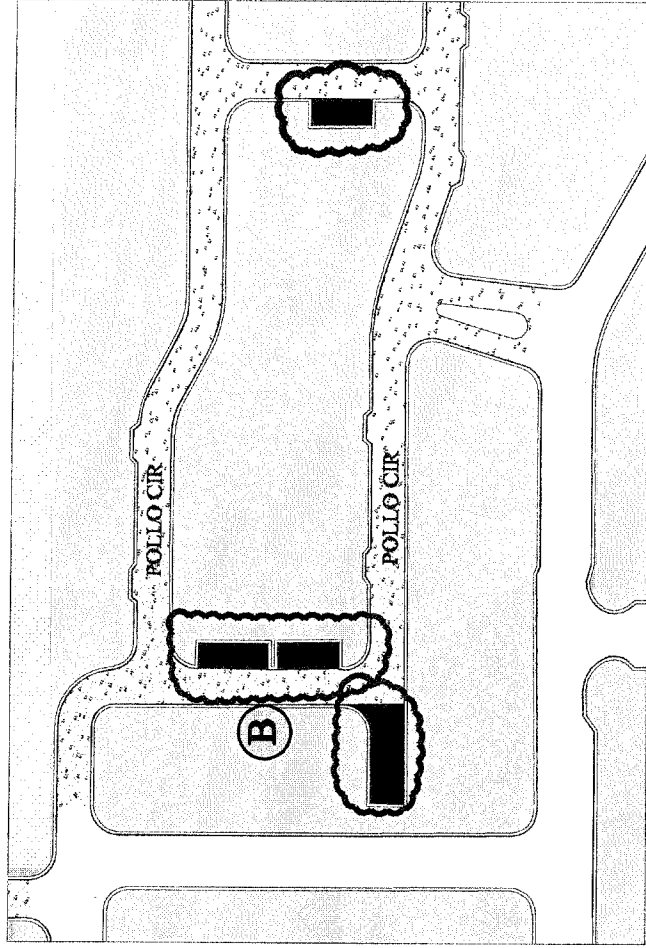
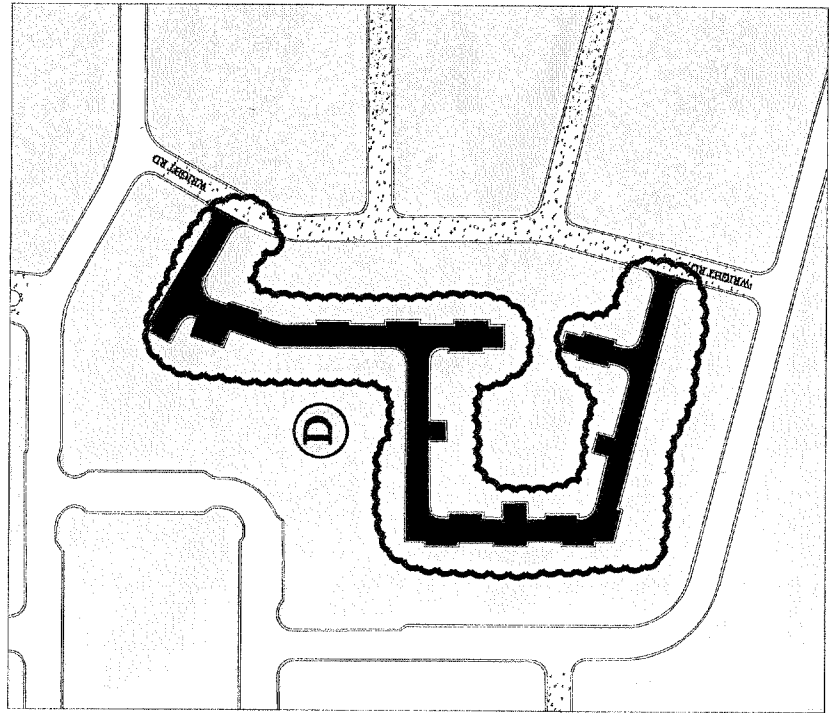
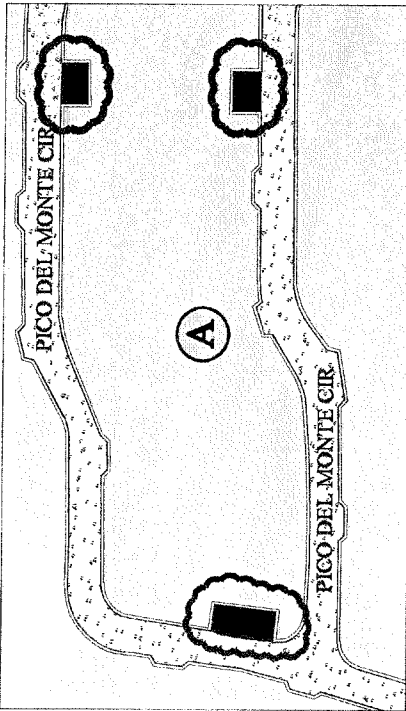


### LEGEND

PUBLIC STREETS DEDICATED  
BY ORIGINAL FINAL PLAT

PRIVATE STREETS TO BE  
DEDICATED TO PUBLIC VIA  
MAP OF DEDICATION

PRIVATE STREETS TO  
REMAIN PRIVATE



# **PRESIDIO IN THE PINES** **Rights-of-Way Ownership**

March 30, 2012



**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Rick Compau, Purchasing Director  
**Date:** 06/27/2012  
**Meeting Date:** 07/17/2012



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**TITLE:**

**Consideration and Approval of Lease of City-Owned Property:** Snow play recreational area on the northeast portion of McMillan Mesa.

**RECOMMENDED ACTION:**

1. Approve the Lease Agreement with D&C Maintenance and Snow Plowing, L.L.C., for an annual lease fee of \$3,000 for the winter season of operation; revenue share, based on gross revenue less sales tax, of 5.5% up to \$400,000; 7.5% from \$400,001 to \$600,000; and 9.5% from \$600,001 and higher; with an initial term of ten (10) years and an option for two 5-year extensions upon mutual written agreement between both parties; and
2. Authorize the City Manager to execute the necessary documents.

**Policy Decision or Reason for Action:**

Award of this Lease Agreement will provide for a public snow play recreational area within the City of Flagstaff. This snow play recreational area on McMillan Mesa is a recreational and economic opportunity for all stakeholders in the community. It represents a prime winter recreation outlet for the Flagstaff area residents, as well as a significant winter attraction for out of town guests, bringing tourism dollars and tax revenue to the City of Flagstaff and fulfills a Council priority.

Decision Points: No subsidiary decision points.

**Financial Impact:**

D&C will pay the City an annual Lease fee of \$3,000 and revenue share (gross revenue, less sales tax) of 5.5% up to \$400,000; 7.5% from \$400,001 to \$600K and 9.5% from \$600,001 and higher for an initial ten (10) year period. The City will provide a fifty (50%) credit towards the construction and landscaping expenditures of \$132,122 paid for by D&C specifically for the West side parking area. The fifty (50%) credit equates to \$66,061, which will be payable in the form of a credit in the amount of \$22,020, per year that will be deducted from the annual Lessee's revenue share for the first three (3) years.

### **Connection to Council Goal:**

Livability through good neighborhoods, affordable housing and varied recreational activities.

This initiative will provide for a public snow play recreational area within the City of Flagstaff. This snow play recreational area is a first-time amenity for all residents in the community. It represents a requested winter recreation outlet for the Flagstaff area residents, as well as a significant winter attraction for out of town guests, drawing tourism dollars to the area.

This was a Council priority in last year's goals.

### **Has There Been Previous Council Decision on This:**

Yes. The lease of this City owned property on Mcmillan Mesa was discussed at the Council work session on May 8, 2012. Also, in November of 2009, a snow play park was proposed for City-owned property located at the east side detention basin located to the north of the Country Club, East Route 66 intersection. The only proposer to submit a proposal response, Recreation Resource Management ("RRM"), withdrew its proposal during a regular City Council meeting when a recommended action was made to award the Lease Agreement to RRM. City Council verbalized its continued interest in a snow play park and directed staff to find another location and consider proposals through a Request for Proposals ("RFP") process.

### **Options and Alternatives**

- Option A: Approve the recommended action to award the Lease Agreement with an amendment that allows night lighting up to and no later than 9:00 p.m.
- Option B: Approve the recommended action to award the lease agreement with an amendment that allows for a lump sum of \$75,000 to be put in an escrow account for restoration of the snow play recreation area in lieu of a performance bond.
- Option C: Reject the one (1) proposal as submitted and utilize City staff to operate the snow play recreational area;
- Option D: Not approve the recommended action and direct City staff to re-solicit the Request For Proposals;
- Option E: Not approve the recommended action and not provide or operate a snow play recreational area.

## **Background/History:**

The Proposed McMillan Mesa Snow Play recreation area is located on a portion of City-owned property. The area is located approximately one mile from downtown Flagstaff. The proposed lease area consists of forty-three (43) acres on the northeast portion of the Mesa. The area retains a portion of the north face of the Mesa escarpment with an elevation change of approximately 160 vertical feet. The City of Flagstaff operated a small ski recreational park in the same location approximately 20 years during the period of 1950-1970. Subsequently after closing the area, the location and other City-owned property locations became popular free lance sledding hills without on-site management/supervision. The lack of direct management and supervision can create numerous problems, including illegal parking, littering, and sanitation issues. This proposed lease is for the daily operation and management of a snow play recreational area. . The Regional Land Use and Transportation Plan provides a land use designation for this parcel as a proposed park and recreation area and this proposed snow play recreation area would be in compliance with the plan .

The snow play park area is bounded on the north by Forest Avenue (4 lane arterial), on the east by Coconino High School, on the south by Gemini Street (2 lanes) and open space owned by the City, and the West by the USGS campus. Vehicle access to the property is provided by the intersection of Forest Avenue and Gemini Street. Pedestrian access is provided by the Flagstaff Urban Trail System and the sidewalk along the public streets. Bus access is provided by stops located at the intersection of Forest Avenue and Gemini Streets. The snow play park site is further supplied with 8 inch reclaimed water and 8 inch potable water lines. Sanitation sewer lines are located off-site in front of Coconino High School. Electric power can be supplied by the APS sub-station located adjacent to the lease area.

The Flagstaff Zoning Code classifies this snow play recreation area as an outdoor commercial recreation site and use of this site is permitted subject to a Conditional Use Permit ("CUP") to be reviewed and approved by the Planning and Zoning Commission. The Lease Agreement for this snow play recreation area shall be contingent upon approval of the CUP.

A Request for Proposals was issued on June 20, 2011 for snow play area operations and management services and corresponding lease. One proposal was received from D&C. This lease will be for an initial ten (10)-year period, with the option for two, five (5)-year extensions upon mutual written agreement between both parties.

The evaluation/selection committee was comprised of six (6) City employees representing the following areas: Purchasing, Capital Improvements, Planning, Recreation, and Public Works. The proposal evaluation process consisted of reviewing the written proposal as submitted, as well as formal discussions with D&C. The evaluation criteria consisted of:

- Qualifications and experience of the proposed company (weighted 15%)
- Qualifications and experience of the proposed manager assigned to the management of the snow play area (weighted 15%)
- Presented approach (weighted 35%)
- Schedule and timeline of complete operational setup (weighted 25%)
- Lease fee and revenue share (weighted 10%)

Based on the evaluation criteria, and formal discussions, the evaluation/selection committee recommends awarding the lease agreement to D&C.

**Key Considerations:**

- The Contract period will be for an initial ten (10)-year period with the option to extend for an additional two (2), five (5)-year periods based on the mutual agreement of the City and D&C.
- D&C is on an aggressive timeline and accelerated schedule in order to meet an opening of this snow play recreational area for the next winter season starting in November of 2013. D&C will need to obtain a conditional use permit and order necessary equipment, conduct site preparation and construct parking lots, recruit and hire staff, and marketing the snow play recreational area.
- This site has been impacted when it was originally dedicated as a snow play/sledding area.
- The Lease Agreement is contingent upon the approval of a Conditional Use Permit.

**Community Benefits and Considerations:**

The Flagstaff community will benefit from the following:

There is a need for a professionally managed snow play recreation area within the City of Flagstaff for use by the public. Our geography and climate lend itself to this outdoor recreation activity. This City-owned McMillan Mesa property, as the recommended site for a snow play recreational area, is within the City limits and will be managed and supervised by a professional company to help ensure the safety of those who will use this snow play recreation area. It represents a prime winter recreation outlet for the Flagstaff area residents as well as a significant winter attraction for out of town guests, bringing tourism dollars and tax revenue to the City of Flagstaff.

**Community Involvement:**

Public Participation Goals of INFORM, CONSULT and INVOLVE were used. D&C, in conjunction with the City, has conducted community outreach efforts that included two (2) public forums to assess the needs and interests of the Flagstaff community for a snow play recreational area. These public forums also included a rendering of an engineering drawing of a site plan that included information regarding site preparation, sledding hill design, parking, equipment, ticket prices and snow making, which engaged further input and feedback from community members, as well as many patrons who are in favor of the snow play recreational area.

In addition to the two public meetings the proposal was also shared with various commissions. On August 24, 2011 the proposal was presented to the Planning and Zoning Commission in preparation for discussions regarding the Conditional Use Permit. During the months of October and November of 2011 staff presented the proposal to the following commissions; Parks and Recreation, Tourism, Open Space, and the Water Commission. The intent was to solicit feedback which was then shared with the proposer. Additionally snow play has been a standing



**CITY OF FLAGSTAFF**  
**PURCHASING DIVISION**  
**SNOW PLAY AREA OPERATION and MANAGEMENT SERVICES LEASE, RFP NO. 2011-52**

**SCORING TABULATION**

<b>Evaluation Criterion #1-- (15 %) QUALIFICATIONS &amp; EXPERIENCE OF PROPOSED COMPANY</b>			
<b>D &amp; C MAINTENANCE and SNOWPLOWING</b>			
<i>Evaluator #1</i>	30		
<i>Evaluator #2</i>	37.5		
<i>Evaluator #3 ***</i>	0		
<i>Evaluator #4</i>	60		
<i>Evaluator #5</i>	45		
<i>Evaluator #6</i>	45		
<i>Evaluator #7</i>	45		
<b>Subtotal:</b>	<b>262.5</b>		
<b>Criteria Ranking:</b>	<b>1</b>		
<b>Evaluation Criterion #2-- (15 %) QUALIFICATIONS &amp; EXPERIENCE OF THE PROPOSED MGR.</b>			
<b>D &amp; C MAINTENANCE and SNOWPLOWING</b>			
<i>Evaluator #1</i>	15		
<i>Evaluator #2</i>	30		
<i>Evaluator #3***</i>	0		
<i>Evaluator #4</i>	60		
<i>Evaluator #5</i>	30		
<i>Evaluator #6</i>	45		
<i>Evaluator #7</i>	45		
<b>Subtotal:</b>	<b>225</b>		
<b>Criteria Ranking:</b>	<b>1</b>		
<b>Evaluation Criterion #3-- (35 %) PRESENTED APPROACH</b>			
<b>D &amp; C MAINTENANCE and SNOWPLOWING</b>			
<i>Evaluator #1</i>	140		
<i>Evaluator #2</i>	140		
<i>Evaluator #3***</i>	0		
<i>Evaluator #4</i>	140		
<i>Evaluator #5</i>	140		
<i>Evaluator #6</i>	140		
<i>Evaluator #7</i>	140		
<b>Subtotal:</b>	<b>840</b>		
<b>Criteria Ranking:</b>	<b>1</b>		

<b>Evaluation Criterion #4-- (25 %) SCHEDULE &amp; TIMELINE OF COMPLETE OPERATIONAL SETUP</b>			
<b>D &amp; C MAINTENANCE and SNOWPLOWING</b>			
Evaluator #1	100		
Evaluator #2	100		
Evaluator #3***	0		
Evaluator #4	125		
Evaluator #5	125		
Evaluator #6	100		
Evaluator #7	100		
<b>Subtotal:</b>	<b>650</b>		
<b>Criteria Ranking:</b>	<b>1</b>		
<b>Evaluation Criterion #5-- (10 %) LEASE FEE &amp; REVENUE SHARE</b>			
<b>D &amp; C MAINTENANCE and SNOWPLOWING</b>			
Evaluator #1	30		
Evaluator #2	40		
Evaluator #3***	0		
Evaluator #4	40		
Evaluator #5	40		
Evaluator #6	40		
Evaluator #7	40		
<b>Subtotal:</b>	<b>230</b>		
<b>Criteria Ranking:</b>	<b>1</b>		
<b>TOTAL:</b>	<b>2207.5</b>		

Evaluator #1	315		
Evaluator #2	347.5		
Evaluator #3***	0		
Evaluator #4	425		
Evaluator #5	380		
Evaluator #6	370		
Evaluator #7	370		
<b>TOTAL</b>	<b>2207.5</b>		
<b>Criteria Ranking:</b>	<b>1</b>		

\*\*\* Evaluator #3 was not able to participate in the evaluation/scoring process.























<b>Consultant</b>	<b>Name</b>	Total
<b>Moss</b>	<b>Adams</b>	#REF!
<b>The Azimuth</b>	<b>Group</b>	
<b>Plante</b>	<b>Moran</b>	#REF!
<b>Pacific</b>	<b>Technologies, inc.</b>	2207.5
<b>Management</b>	<b>Partners</b>	
<b>EGOV</b>	<b>Consulting</b>	#REF!
<b>Matrix</b>	<b>Consulting</b>	#REF!
<b>MSS</b>	<b>Technologies</b>	#REF!
<b>Reliable</b>	<b>Resources</b>	
<b>MTG</b>	<b>Mgnt Consultants</b>	#REF!
<b>Data Site</b>	<b>Consortium</b>	#REF!
<b>Vantage Tech</b>	<b>Consulting Grp</b>	#REF!

# **ATTACHMENT A**

## **LEASE AGREEMENT CITY OF FLAGSTAFF McMILLAN MESA PROPERTY**

This Lease ("Lease") is made as of the 16th day of May, 2012, by and between the City of Flagstaff ("City") an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona 86001, and D&C Maintenance and Snowplowing, an Arizona Limited Liability Corporation, ("Lessee"), whose address is 3058 N. Joy Lane, Flagstaff, Arizona 86001. The City and Lessee are sometimes referenced in this Lease as "Party" or "Parties," as the case may be.

### **RECITALS**

The City is the owner of 43 acres on McMillan Mesa (the "Property"). The lease park area is bounded on the North by Forest Avenue (4 lane arterial) on the East by Coconino High School, on the South by Gemini Street (2 lanes) and open space owned by the City and the West by the USGS campus.

The City published Request for Proposals Number 2011-52 ("RFP") on or about June 20, 2011, for offers to enter into a lease with the City for operation of a snow play recreation area located on McMillan Mesa for the convenience of the public to utilize for recreational fun. Lessee agrees to provide the services as set forth in their proposal response detail in Exhibit "A" at the monthly lease fee and revenue share as outlined in Article IV, Lease Fee and Revenue Share. All of the terms and conditions set forth in the Request for Proposals ("RFP"), pertaining to the services in Exhibit "A" shall be incorporated in this Agreement as if fully set forth herein.

Lessee responded to the RFP and the City determined that Lessee was the most responsive, responsible Proposer to the RFP.

NOW, THEREFORE, in consideration of the Property and the mutual covenants contained herein, the City and Lessee agree as follows:

### **ARTICLE I. DEFINITIONS**

As used in this Lease, the following terms, phrases, words and their derivations have the meaning given below. When not inconsistent with the context, words in the singular include the plural, and masculine terms and pronouns include the feminine and neuter, and vice-versa, as the context may require.

- A. "McMillan Mesa" means the area that is bounded on the North by Forest Avenue (4 lane arterial) on the East by Coconino High School, on the South by Gemini Street (2 lanes) and open space owned by the City and the West by the USGS campus
- B. "City" means the City of Flagstaff, Arizona, as represented by the Council of the City of Flagstaff, and where this Lease speaks of "approval by the City," approval means action by the Council of the City of Flagstaff, unless otherwise indicated.

- C. “Designated Representative,” “Director” or “Manager” means the City’s Recreation Manager.
- D. “CPI” means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, United States Department of Commerce, or such other index that the Bureau of Labor Statistics may later publish in lieu of the Consumer Price Index.
- E. “Fixed Lease” means Lessee’s fixed annual Lease obligation based on the square footage of the Property, as provided in Section A of Article IV, exclusive of the common seating area to which Paragraph B(1)(b) of Article II refers.
- F. “Gross Receipts” means the total sales price, exclusive of sales and excise taxes, of merchandise and services sold by Lessee from the Property, or off Property if connected with Lessee’s operations on the Property, whether for cash or for credit, regardless of when or whether paid for or not, together with the aggregate amount of all exchanges of goods, wares, merchandise and services for like property, or services, at the selling price, as if it had been sold for cash or the fair and reasonable value, whichever is the greater. The total sales price of any and all sales of merchandise accepted by Lessee on consignment shall be included in its Gross Receipts.
- G. “Lessee” means D&C Maintenance and Snowplowing, LLC, an Arizona Limited Liability Corporation, entering this Lease as the operator and tenant of the Property.
- H. “Percentage Rent or Revenue Share” means that portion of Lessee’s rent obligation under this Lease based on its Gross Receipts, as provided by Section B of Article IV.
- I. “Property” means that space leased to Lessee herein, as shown and further described in Exhibit A, “General Description of the Leased Snow Play Recreation Area”, attached to and incorporated into this Lease.

## **ARTICLE II. LEASE AND USE OF PROPERTY**

### **A. LEASE OF PROPERTY**

The City, for and in consideration of the rentals and fees reserved in this Lease and of the covenants, conditions and agreements to be done and performed by Lessee, hereby leases and demises to Lessee, and Lessee does hereby take and lease from the City, the Property upon the terms, covenants and conditions hereinafter set forth. Lessee warrants that it has physically inspected the Property and accepts the Property in its present condition, “as is.” Enforcement of this Lease Agreement is contingent upon approval of the Conditional Use Permit that will be submitted by the Lessee.

### **B. USE OF PROPERTY**

Lessee is entitled to occupy and operate the Property solely as set forth in this Lease and for no other purposes than such business purposes as may be necessary and incidental thereto. Lessee shall, on an exclusive basis, operate and manage a snow play area, as well as sell food, non-alcoholic beverages and various snow play related products to the general public from the Property. Lessee covenants and agrees that it shall maintain a noncritical assessment rating from the Coconino County Health Department regarding the standards of food service in its occupation and operation of the Property.

**1. Common and Joint Use Areas**

- (a) Subject to all rules and regulations, Lessee's agents and employees, patrons and invitees, and Lessee's suppliers of service and furnishers of materials shall have the right of ingress to and egress from the Property.
- (b) Lessee and Lessee's agents and employees, patrons and invitees shall have the exclusive right to use the vehicular parking area as designated by the City and constructed by Lessee.

**C. CONSTRUCTION OF TENANT IMPROVEMENTS**

**1. General**

Lessee may, at its sole cost and expense, provide and install any necessary improvements, such as counter areas, facilities, decorations, signs, fixtures and equipment for the Property. All such improvements shall be of high quality, safe, modern in design, attractive in appearance, and shall be made or installed at the Property only with the prior written consent of the Recreation Manager. Lessee shall submit a description of the proposed improvements to the Recreation Services Director at least seven (7) days prior to installation. To the extent practicable, all improvements shall be removable at the end of each annual snow play recreation season.

**2. Permits and Authorizations**

Lessee shall make no improvements to the Property until it has first, at its sole cost and expense, submitted all design and construction plans, specifications and related documents for the improvements to the City's Building and Safety Division, and that Division has issued a building permit for the improvements. Lessee shall further diligently pursue and obtain all other permits, licenses and authorizations required for the construction of the improvements and operation of the Property.

**3. Insurance**

Before commencing any improvement or equipment installation at the Property, Lessee shall require that its construction contractors procure and maintain insurance for any construction and installation protecting both Lessee and City, as well as the construction contractors, with policy amounts and coverage as the City in each instance determines and provide certificates of insurance with respect to all such policies to the City prior to commencement of construction. Such policies shall name the City as an additional insured.

**4. Construction Standards, Rules and Regulations**

Lessee shall ensure that all improvements, additions or alterations constructed by Lessee at the Property are constructed in a good and workmanlike manner and conform to all applicable statutes, ordinances, building codes, rules and regulations of any governmental authority having jurisdiction. Lessee shall require in all contracts for construction that all contractors also comply with all applicable statutes, ordinances, codes, rules and regulations. Lessee's construction work shall be subject to inspection by the City's Building and Safety Division and its authorized personnel during reasonable business hours. Lessee shall keep the Property free and clear of liens for labor and material and shall indemnify, defend and hold the City harmless from any liability arising therefrom.

**5. Cost of Improvements**

Lessee shall bear all costs of the construction of any and all improvements, alterations and additions to the Property by or for Lessee.

**6. Additional Alterations, Additions or Replacements**

Lessee shall make no alterations, additions, replacements or improvements to the Property other than those for which it will obtain a building permit upon commencement of this Lease, nor shall Lessee install any equipment which requires any electrical connection (other than by ordinary wall plug or floor receptacle) nor make any changes in those electrical connections installed on the Property without the prior written consent of the Recreation Services Director. Any electrical service other than that provided at the execution of this Lease shall be installed and provided at Lessee's sole cost and expense.

**D. MAINTENANCE OF PROPERTY AND IMPROVEMENTS**

**1. General Maintenance**

Lessee shall, at its sole cost and expense, maintain the Property and all improvements, additions or alterations to the Property in good working order and in a condition based on a standard of care reflecting prudent property management, reasonable wear and tear expected.

**2. Preventive Maintenance and Repair**

Lessee shall perform, at its sole expense, ordinary preventive maintenance and ordinary upkeep and repair of all Lessee owned structures (e.g., concessions lodge, merchandise shop, parking lot, etc.) personal property and equipment at the Property.

**3. Off-Property Repair**

Lessee shall, at its sole cost and expense, immediately repair any and all damage in or to any area of the leased Property occasioned by the intentional or negligent acts, omissions or fault of Lessee, its agents or employees, and shall immediately remove any litter, debris, petroleum products or other liquids, waste or grease that may result from its operations or the activities of its agents, employees, or suppliers.

**4. Maintenance or Repair by the City upon Lessee's Default**

- (a) In the event that Lessee fails to perform any obligation required by this Section D to be performed by Lessee at Lessee's cost for a period of fifteen (15) days after receipt of written notice from the City to do so, the City, upon the expiration of the fifteen (15) day period may, but shall not be obligated to, perform that obligation of Lessee, which may include entry upon the Property if reasonably required.
- (b) Notwithstanding the foregoing, in the event that Lessee's failure to perform such of its obligations under this Section D endangers the health or safety of the public, the City may, but shall not be obligated to, perform the obligation of Lessee upon prior written notice of its intent to do so, without awaiting the expiration of the fifteen (15) day period.

- (c) In the event that the City performs any obligation of Lessee under this Section D, then the City is entitled to invoice Lessee for the reasonable cost and expense of performing such obligations, plus a fifteen percent (15%) administrative charge, and Lessee shall pay, as additional rent, such amount on or before the first day of the next month following along with its payment of Fixed Rent.
- (d) The City shall not be liable to Lessee for any loss, cost or expense to Lessee resulting from the City's performance of Lessee's obligations in accordance with the provisions of this Section D.

## **E. ENTRY AND INSPECTION OF PROPERTY**

### **1. Entry and Inspection**

The City and its authorized officers, employees, agents, contractors, subcontractors or other representatives shall have the right to enter upon the Property:

- (a) During reasonable business hours to determine whether Lessee is complying with the terms and conditions of this Lease;
- (b) During reasonable business hours for the purpose of inspecting the Property and for purposes of fulfilling the City's obligations under this Lease, provided, however, that entry shall be at such times and in such manner as not to interfere unreasonably with the operations of Lessee; and
- (c) At any time as may be required by an emergency or for emergency repairs or maintenance, without any liability or responsibility to Lessee for loss of business.

### **2. No Termination or Interference**

No entry by or on behalf of the City upon the Property shall cause or constitute a termination of this Lease, nor be deemed to constitute an interference with Lessee's possession of the Property, nor constitute a revocation of or interference with any of Lessee's rights concerning exclusive use of the Property.

## **ARTICLE III. TERM**

### **A. INITIAL TERM**

This Lease shall become effective upon its execution by both Parties and shall continue in force and effect for an initial term of ten (10) years, unless sooner terminated as provided herein.

### **B. RENEWAL**

Upon completion of its initial term, and provided that Lessee is not in default under this Lease, this Lease may be administratively renewed by the City for two (2) additional five (5) year terms, subject to written approval by both parties and to any modifications to the Lease as are mutually agreeable.

## ARTICLE IV. LEASE FEE AND REVENUE SHARE

### A. LEASE FEE

Lessee shall make annual lease payments in the amount of **Three Thousand Dollars (\$3,000)** due and payable within thirty (30) days of the end of the winter season when D&C Maintenance and Snowplowing has closed their operation of the snow play park.

### B. REVENUE SHARE

In addition to the Lease Fee, provided in Section A above, Lessee shall pay to the City a percentage of revenue based on Lessee's monthly Gross Adjusted revenues, defined as all revenues less applicable sales and excise taxes calculated as follows: **5.5% up to \$400,000; 7.5% from \$400,001 to \$600,000 and 9.5% from \$600,001 and higher**. A dedicated bank account for deposits from this contract shall be established, to facilitate audits. Lessee shall provide to the City a two (2) tier system and give free day passes, at no charge, as follows: Prior to installation of snow making equipment, Lessee shall grant the City of Flagstaff **300** free day passes per year. These passes shall be distributed in three (3) phases based on operating days. **100 of the free day passes shall be distributed to residents prior to or during the first 10 operating days in each season.** If there is sufficient snow to allow 11-20 operating days, an additional **100 free day passes shall be distributed to residents.** If there is sufficient snow to allow 21 or more operating days in a season, an additional **100 free day passes shall be distributed to residents.**

After snow making equipment has been installed at the snow play area, the Lessee shall distribute to the City **600 free day passes per year.** These free day passes shall be distributed in three (3) monthly installments of 200 per month until all 600 have been distributed to residents.

The Lessee's intentions in giving these free day passes to the City, is to provide some of the underprivileged residents within the City of Flagstaff access to the snow play park. The City shall determine how these free day passes will be distributed.

The Lessee shall work with the Flagstaff Unified School District and offer a \$2.00 per person daily rate for all organized school trips and functions during the operating season.

### C. REPORTING AND PAYMENT OF REVENUE SHARE

Lessee shall, on or before the tenth (10th) day of each month in which Lessee engages in operations during the term of this Lease, submit to the City a detailed statement showing its Gross Receipts from its operations at the Property for the preceding calendar month and showing such reasonable detail and breakdown as the City may require. Each statement shall be accompanied by payment of that preceding month's Percentage Rent, calculated as provided in Section B of this Article IV.

### D. CPI ADJUSTMENT

The annual lease fee shall be adjusted at the beginning of each calendar year during the term of this Lease and any renewal term by the same percentage as that represented by the change, if

any, in the Consumer Price Index for All Urban Consumers ("CPI") most recently published by the Bureau of Labor Statistics, United States Department of Commerce (or such other index that the Bureau of Labor Statistics may later publish in lieu of the CPI at that time), as compared with the CPI most recently published one year prior.

## **E. ACCOUNTING**

### **1. Books and Records**

Lessee shall, with respect to all business done by it at the Property, keep true and accurate account records and books which shall, among other things, show all sales made and services performed for cash or credit or otherwise, without regard to whether paid for or not, and the gross sales of each business and the aggregate amount of all sales and services and orders of each, and of all the Lessee's business done upon and within or from the Property. The account records and books shall be maintained at a location within the city limits of the City and shall be available and convenient for inspection by the City as provided in Subsection 3 of this Section E.

### **2. Annual Reports**

Within ninety (90) days after the end of each calendar year during the term of this Lease and any renewal term, Lessee shall furnish to the City an annual accounting statement prepared according to generally accepted accounting principles, in such form as the City may reasonably require, which is a true disclosure of the operations of Lessee at the Property, including but not limited to Lessee's Gross Receipts and Percentage Rentals for the previous year.

### **3. Audit**

The City and its employees, agents and authorized representatives shall have the right at all reasonable times and during all business hours to inspect and examine such records, cash registers, books, and other data as may be necessary to confirm Lessee's Gross Receipts for Lessee's operations at the Property. If any such inspection or audit discloses any material misstatement, the City may terminate this Lease for cause immediately, without penalty or liability to the City.

## **F. LATE PAYMENT**

All amounts due from Lessee to the City under this Lease that are not paid by Lessee when due shall be subject to a charge of Ten Percent (10%) of the amount due, plus interest at the rate of One (1%) percent per month, or fraction of a month, from the time due and owing until paid. This late payment and interest shall be payable as additional rent, subject to all the terms and conditions hereof.

## **ARTICLE V. BUSINESS OPERATIONS AND LESSEE'S OBLIGATIONS**

### **A. GENERAL**

Lessee shall not use or permit the use of the Property, or any part thereof, for any purpose or use other than as authorized by this Lease without the prior written consent of the City.



## **B. COMPLIANCE WITH LAWS, RULES AND REGULATIONS**

### **1. General**

Lessee, its employees, representatives and agents, shall comply at all times with all present or future laws, rules, ordinances and regulations, and all amendments or supplements thereto, governing or relating to the use of the Property, or that may from time to time be promulgated by Federal, State or local governments and their authorized agencies.

### **2. Taxes, Licenses and Permits**

Lessee shall promptly pay all taxes, excises, license fees, permit fees, levies or assessments of whatever nature applicable to its operation and lease of the Property. Lessee may elect, however, at its own cost and expense, to contest any such tax, excise, license fee, permit fee, levy or assessment, provided that such contest is in accordance with law and does not result in a violation by Lessee of any law, rule, regulation or ordinance. Lessee shall keep current all local, State or Federal licenses or permits required for the conduct of its business. Lessee shall, upon request, display to the Recreation Manager any and all permits, licenses, authorizations or other evidence of compliance with such laws, rules and regulations.

### **3. Energy Conservation**

Lessee shall comply with all local, State and Federal laws, rules, regulations and orders pertaining to energy conservation and management.

## **C. SANITARY OPERATION**

### **1. General**

Lessee shall maintain and operate the Property in a safe, clean, orderly and inviting condition at all times satisfactory to the City. Lessee shall always conduct its operations on the Property in a manner using all available and practical devices to reduce to a reasonable minimum, considering the nature and extent of Lessee's operation, the emanation from the Property of noise, vibration, movement of air, fumes and odors, so as not to interfere with the use of other Property adjoining the Property. Lessee shall always conduct its operations in accordance with the current regulations of the United States Environmental Protection Agency and of other applicable Federal, State and local authorities.

### **2. City's Right to Cure Default**

In order to maintain a high level of custodial services at the Property, the City, upon a default of Lessee in its obligations under this Section, may provide necessary custodial services within the Property or without, and Lessee shall, in such event, pay to the City the cost of the City's custodial services as additional rent, plus a fifteen percent (15%) administrative charge, on the first day of the next month following, along with its payment of Fixed Rent for such month.

## **D. HOURS OF OPERATION**

1. Lessee may operate the snow play park from "sun up" until "sun down". Lighting, for night time operation, is not permissible. During operating hours, Lessee shall keep the Property open for business, offering its goods and services to the public and having attendants on

duty at the Property during all hours of operation seven (7) days per week, including Sundays and holidays. These hours and days of operation may be adjusted with written consent of the Recreation Services Director. Closures during normal operating hours are permissible for limited periods of time, not to exceed two (2) hour intervals. Such hours are subject to such reasonable changes as agreed upon by Lessee and the Recreation Services Director.

## 2. Control of Personnel

Lessee shall, at the Property exercise reasonable control over the conduct, demeanor and appearance of its employees, agents and representatives and the conduct of its contractors and suppliers. Upon objection from the Recreation Manager to Lessee concerning the conduct, demeanor or appearance of such persons, Lessee shall within a reasonable time remove or correct the cause of the objection. Lessee shall require all of its employees, agents, representatives and subcontractors, or independent contractors, hired by Lessee working in view of the public, to wear clean and neat attire and to display appropriate identification, and Lessee shall require all of its employees to conduct themselves in a professional manner.

## 3. Designated Snow Play Area Landscaping and Parking

- (a) Lessee shall provide at Lessee's expense, landscaping and parking lots as outlined in Exhibit "B and C" (See attached). The City shall provide a fifty percent (50%) credit towards the construction and landscaping expenditures specifically for the west side parking area, based on the following costs obtained through a competitive Request For Quotations process as follows:

- |                            |                    |
|----------------------------|--------------------|
| 1. West side parking area: | \$97,174.00        |
| 2. West side landscaping:  | <u>\$34,948.00</u> |

**Total:** **\$132,122.00**

Based on the Lessee's total dollar cost of \$132,122 for construction and landscaping for the West side parking area, the City shall pay 50% of this dollar amount or \$66,061, which shall be payable in the form of a credit ~~provide a credit in the amount~~ of \$22,020.00, per year that shall be deducted from the annual Lessee's revenue share for three (3) years.

Lessee shall be responsible for snow removal from the designated snow play area parking lots outlined in Exhibit "B and C".

Parking and landscaping shall be installed on both the East and West side of Forest Ave. that will comply with Exhibit B and C (See attached). Additionally, the landscape plant sizes shall include, at minimum 6' high ponderosa pines and all deciduous trees shall be, at a minimum, 2" caliper trees. The temporary parking lots shall, at a minimum, be constructed with a 6" aggregate base coarse and an engineering variance will be necessary. The parking lot shall be maintained including snow plowing during operations and dust free when not in use. Asphalt paving of the aisle ways of the parking lot(s) will be required after 3 years of snow play park operations. A drop-off/pick-up queuing and stacking area shall be incorporated into the proposal to accommodate a minimum of 12 cars/trucks within the parking plan.

**E. LIENS**

Lessee shall not permit or suffer the placement on the Property, or on any fixture, addition, betterment or improvement thereto, any lien of any nature, including but not limited to tax liens and liens arising out of or because of any construction or installation performed by or on behalf of Lessee or any of its contractors or subcontractors upon the Property, or arising out of or because of the performance of any work or labor to it or them at the Property, or the furnishing of any materials to it or them for use at the Property. Should any such lien be made or filed, Lessee shall bond against or discharge the lien within ten (10) days after written request by the Recreation Manager.

**F. INDEMNIFICATION**

Lessee shall indemnify, defend and hold harmless the City, its officers, officials, agents, employees and volunteers (collectively "Indemnatee") from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses, including court costs, costs of claim processing, investigation, and litigation, and reasonable attorney's fees (collectively referred to hereinafter as "Claims") for personal injury, including death, or property damage, caused by or arising from, in whole or in part, the acts, errors, omissions, negligence, or alleged negligence of Lessee, or any of Lessee's directors, officers, agents, employees, volunteers, contractors or subcontractors. This indemnification includes all Claims arising or recovered under the Workers' Compensation laws, or arising out of the failure of Lessee to comply with any Federal, State or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the Parties that the Indemnatee shall, in all instances except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Lessee from and against all Claims. Lessee shall be responsible for all primary loss investigation, defense, and judgment costs where this indemnification is applicable. This indemnification by the Lessee shall extend, but not be limited to, the following:

- (a) Construction by or through the Lessee of any improvements or any other work or thing done in, on or about the Property or any part thereof;
- (b) Any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Property, areas adjacent thereto or improvements thereon by or through the Lessee, or any nuisance made or suffered thereon, or any failure by the Lessee to keep the Property or space comprising a part thereof in a safe condition;
- (c) Any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Property, areas adjacent thereto or improvements thereon, or any part thereof;
- (d) Any lien or claim which may be alleged to have arisen against or on the Property, or improvements thereon, or any part thereof, or any of the assets of, or funds appropriated to, the City, or any liability which may be asserted against the City with respect thereto;
- (e) Any acts or omissions of Lessee, Lessee's subtenant or any of its or their respective agents, contractors, servants, employees, licensees or invitees;

- (f) Any failure on the part of Lessee to pay rent, or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease, and the exercise by the City of any remedy provided in this Lease with respect thereto;
- (g) Any tax which Lessee is obligated to pay or cause to be paid, including any tax attributable to the execution, delivery or recording of this Lease.

The foregoing provisions shall survive the expiration or earlier termination of this Lease to the extent that the act, error, omission, negligence or alleged negligence arose prior to such expiration or termination.

Lessee shall hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Property at the sole risk of Lessee, and, to the extent set forth above, hold the City harmless from any loss or damage thereto by any cause whatsoever.

The obligations of Lessee under this Article V(G) shall not in any way be affected by the absence of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting this Lease.

In the event that any Claims are made or brought against the City by reason of any event, specified or unspecified, which is the subject of Lessee's foregoing indemnification, then, upon demand by the City, the Lessee, at its sole cost and expense, shall resist or defend such Claims in the City's name. Notwithstanding the foregoing, the City may engage its own attorneys to defend it or to assist in its defense, and Lessee shall pay the reasonable fees and disbursements of such attorneys.

#### **G. INSURANCE**

Lessee shall procure and maintain for the duration of the Lease insurance against claims for injury to persons or damage to property, which may arise from, or in connection with, this Lease regarding the acts or omissions of Lessee, Lessee's agents, representatives, employees, subtenants, contractors, or subcontractors. The insurance requirements herein shall be minimum requirements for this Lease and in no way limit the indemnification covenants contained herein. The City does not represent or warrant that the minimum limits set forth herein are sufficient to protect Lessee from liabilities that might arise out of this Lease, and Lessee is free to purchase such additional insurance as Lessee may determine is necessary.

- (a) Minimum Scope and Limits of Insurance. Lessee shall provide coverage at least as broad and with limits not less than those stated below.

- (i) **Commercial General Liability – Occurrence Form**  
*(Form CG 0001, ed. 10/93 or any replacement thereof)*  
 General Aggregate -- \$2,000,000  
 Personal and Advertising Injury -- \$1,000,000  
 Each Occurrence -- \$1,000,000  
 Fire Damage (any one fire) -- \$50,000  
 Medical Expense (any one person) -- Optional

- (ii) **Umbrella Excess Liability**  
Excess Liability -- \$2,000,000

**(iii) Workers' Compensation -- Statutory**

Employer's Liability: Each Accident -- \$500,000

Disease -- Each Employee -- \$500,000

Disease -- Policy Limit -- \$500,000

(b) Self-insured Retention/Deductibles. Any self-insured retentions and deductibles shall be declared to and approved by the City.

(c) Other Insurance Requirements. All policies shall contain, or be endorsed to contain, the following provisions:

(i) Commercial General Liability and Automobile Liability Coverages.

(1) The City of Flagstaff, its officers, officials, agents, employees and volunteers shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Property subject to this Lease and activities performed by or on behalf of Lessee, including products and completed operations of Lessee, and automobiles owned, leased, hired or borrowed by Lessee.

(2) Lessee's insurance shall contain broad form contractual liability coverage.

(3) The City of Flagstaff, its officers, officials, agents, employees and volunteers, shall be named as additional insureds to the full limits of liability purchased by Lessee even if those limits of liability are in excess of those required by this Lease.

(4) Lessee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees or volunteers, shall be in excess to the coverage of Lessee's insurance and shall not contribute to it.

(5) Lessee's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(6) Coverage provided by Lessee shall not be limited to the liability assumed under the indemnification provisions of this Lease.

(7) All policies shall contain a waiver of subrogation against the City, its officers, officials, agents, employees and volunteers for losses arising from Lessee's operations, occupancy and use of the Property subject to this Lease.

(ii) Workers' Compensation and Employee's Liability Coverage. The insurer agrees to waive all rights of subrogation against the City, its officials, officers, agents,

employees and volunteers for losses arising from Lessee's operations, occupancy and use of the Property subject to this Lease.

- (d) Notice of Cancellation. Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City. Such notice shall be sent directly to the Recreation Manager as provided in Article VIII(E) herein.
- (e) Acceptability of Insurers. Lessee shall obtain insurance coverage hereunder with insurers duly licensed, or approved unlicensed companies, in the State of Arizona and with a "Best's" rating of not less than A-: VII. The City does not represent or warrant that the above required minimum insurer rating is sufficient to protect Lessee from potential insurer insolvency.
- (f) Verification of Coverage. Lessee shall furnish the City with certificates of insurance (*ACCORD form*) as required by this Lease. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.

The City shall approve all certificates of insurance before Lessee takes possession of the Property. Lessee's failure to maintain the insurance policies as required by this Lease, or to provide timely evidence of policy renewal, shall constitute a material breach of this Lease. All certificates of insurance shall be sent directly to the Recreation Manager as set forth in Article VIII(E) herein. A description of the Property shall be noted on the certificates of insurance. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Lease at any time.

- (g) Approval. Any modification or variation from the insurance requirements in this Lease shall have the prior written approval of the City's Risk Manager. Such action shall not require a formal Lease amendment but may be made by administrative action.
- (h) Policy Review and Adjustment. All insurance policies required by this Lease shall be subject to periodic review and adjustment by the City, at the City's sole discretion, in order to determine the adequacy of the insurance amounts in light of the then existing circumstances.
- (i) Failure to Maintain Insurance. In the event that Lessee fails or refuses to provide copies of the renewal insurance policies, together with evidence of payment of premiums therefore, or otherwise fails or refuses to procure or maintain insurance coverage as required by this Lease, the City shall have the right, at the City's sole discretion, to procure and maintain such insurance coverage upon giving five (5) days' prior notice to Lessee. After obtaining such insurance coverage, the City shall give prompt notice to Lessee of the City's payment of premiums, stating the amounts paid and the name(s) of the insured(s). Any such premiums paid by the City hereunder shall

be due and payable by Lessee to the City on the first day of the month following the date on which the premiums were paid.

#### **H. FIRE PROTECTION**

Lessee shall at all times keep and maintain in good working order at the Property such fire extinguishing equipment and apparatus as may be required by any of Lessee's insurance policies maintained under this Lease, or as, otherwise, may be adequate and appropriate to Lessee's use of the Property, and shall, from time to time and as often as reasonably required by the City, conduct tests of the fire extinguishing equipment and apparatus.

#### **I. NON DISCRIMINATION**

##### **1. General**

Lessee shall furnish its goods and/or services at the Property on a fair, equal and non-discriminatory basis to all patrons and shall charge fair, reasonable and nondiscriminatory prices for each unit or service. Lessee may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

##### **2. Compliance with Civil Rights Act**

Without limiting the generality of the foregoing, Lessee, for itself and its heirs, personal representatives, successors in interest and assigns, as a part of the consideration for this Lease, does hereby covenant and agree that:

- (a) No person, on the grounds of race, color or national origin, shall be excluded from participation in, denied the benefits of, or otherwise, be subjected to discrimination in the use of the Property;
- (b) In the construction of any improvements on, over, or under the Property, and the furnishing of services at the Property, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color or national origin;
- (c) No person shall be subject, on the grounds of race, color, or national origin, to segregation or special treatment in any manner related to the receipt of any goods or services furnished at or from the Property;
- (d) Lessee shall use and operate the Property at all times in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Subtitle A, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, as amended and as the same may be amended from time to time;
- (e) Noncompliance with any of the above nondiscrimination covenants shall constitute a material breach of this Lease, and in the event of such noncompliance, the City shall have the right to judicially enforce such covenants and/or terminate this Lease and reenter and repossess the Property, and to hold the same as if this Lease had never been made or entered into, provided that all notice, appeal and related procedures of 49 C.F.R. Subtitle A, Part 21 are followed and completed prior to such termination; and

- (f) Lessee shall include the provisions of this Subsection J(2) in any lease, agreement or contract by which Lessee shall grant any right or privilege to any person, firm or corporation to render accommodations, goods and/or services to the public on the Property.

**J. LIMITATION OF LIABILITY**

The City shall not, by virtue of the obligations set forth in Section A of Article VI, be liable to Lessee for any interruption of any service or utilities beyond the control of the City, and, except as otherwise may be expressly set forth in this Lease, Lessee shall have no cause of action against the City for constructive eviction or otherwise as a result of any such interruption. Lessee expressly agrees that the City shall not be liable to Lessee for bodily injury or for any loss or damage to real or personal property occasioned by flood, fire, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil commotion, smoke, vandalism, malicious mischief, or acts of civil authority and not caused solely by the negligence or willful acts or omissions of City.

**ARTICLE VI. DEFAULT AND TERMINATION**

**A. TERMINATION BY THE CITY**

Lessee acknowledges and agrees that the City may, at its option, upon the occurrence of any of the following events, immediately or at any time thereafter, terminate this Lease and, without demand or notice, enter into and upon the Property or any part thereof and repossess the same and expel Lessee and any persons claiming by, through or under Lessee, and remove its or their property and effects, if any, forcibly if necessary, from the Property, without being deemed guilty of trespass and without prejudice to any remedy which otherwise might be available for arrearage of rent or breach of any provision of this Lease:

1. If Lessee shall be in arrears in the payment of any rent due under this Lease for a period of ten (10) days or more;
2. The failure or refusal of Lessee to conduct its operations at the Property continuously as required in this Lease, and such failure or refusal continues for a period of at least ten (10) days after the City has notified Lessee in writing of such default;
3. The failure or neglect of Lessee to perform any of the covenants, terms and conditions of this Lease (other than payment of rent and continuous operation of Lessee's business operations), and the failure or neglect continues for a period of at least thirty (30) days after the City has notified Lessee in writing of the failure or neglect, or, in the event that the failure or neglect cannot be completely corrected within the thirty (30) day period, if Lessee has not actively begun correcting the failure or neglect within the thirty (30) day period;
4. The voluntary abandonment by Lessee of the Property for a period of thirty (30) days or more;
5. The seizure or taking of possession for a period of fifteen (15) days or more, of all or substantially all of the property used on the Property belonging to Lessee by or pursuant to



lawful authority of any legislative act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator;

6. The filing of any lien against the Property because of any act or omission of Lessee which is not discharged or contested in good faith (as the City shall determine in its sole discretion) by proper legal proceedings within twenty (20) days of receipt of actual notice of the lien by Lessee;
7. Lessee's willful falsification of any of its business records or books with the intent of depriving the City of any rents or other rights under the terms of this Lease;
8. If Lessee shall make or attempt to make an assignment, transfer, merger or consolidation of its business operations at the Property in violation of Section C of Article VIII of this Lease, or;
9. Any permanent injunction of Lessee's conduct of business at the Property by a court of final jurisdiction; provided, however, that if Lessee is temporarily enjoined from doing business at the Property, any resulting cessation of business by Lessee so long as the injunction remains in effect shall not be considered a breach of this Lease or cause for termination by the City, unless and until the injunction becomes permanent.

## **B. ADDITIONAL REMEDIES**

### **1. Statutory Remedies**

In addition to any other remedies provided in this Lease, the City, as lessor, shall be entitled to all of the remedies enumerated in Title 33, Chapter 3, Article 4 of the Arizona Revised Statutes, the provisions of which are hereby incorporated by reference into this Lease, as if the same were set forth in their entirety, upon the occurrence of any of the events set forth therein.

### **2. Remedies Cumulative**

The remedies of the City set forth in this Lease shall be cumulative and are not intended to be exclusive of any other remedies or means of redress to which the City may be lawfully entitled in the event of Lessee's breach of any provision of this Lease. In addition to any other remedies set forth in this Lease, the City shall be entitled to specific performance and to restraint by injunction of any violation, or attempted or threatened violation, of any of the terms, covenants, conditions or other provisions of this Lease.

## **C. TERMINATION BY LESSEE**

### **1. Termination for Cause**

In addition to any other rights of cancellation it may have under this Lease or by law, Lessee may, at any time that Lessee is not in default, terminate this Lease at its option by giving the City thirty (30) days' prior written notice of termination, upon the occurrence of any of the following events that would be considered beyond the Lessee's control:

- (a) The issuance, by a court of competent jurisdiction, of an injunction of at least thirty (30) days' duration, prohibiting or restraining the use of the Property, or Lessee's business operations.
- (b) A breach by the City of any material covenant of this Lease, which remains uncured for a period of thirty (30) days following written notice of the breach to the City, or, in the event that the breach cannot be completely cured within the thirty (30) day period, if the City has not actively begun curing the breach within the thirty (30) day period;
- (c) Lessee's inability to use the Property or to conduct its business operations at the Property due to unsafe conditions which are beyond the control of Lessee; or
- (d) The seizure or other assumption of control of the Property by any governmental entity other than the City.

## 2. Termination Without Cause

In addition to any other rights of termination Lessee may have under this Lease, Lessee may, at any time that Lessee is not in default, terminate this Lease without cause by giving the City sixty (60) days' prior written notice of termination.

## D. PROPERTY UPON TERMINATION

### 1. Condition of the Property

Lessee covenants and agrees that within six (6) months following—upon any termination of this Lease, however caused, it shall quit and surrender the Property, and perform all repairs of the Property reasonably necessary to restore the Property to the same condition it was in at the time this Lease was entered into, reasonable wear and tear excepted.

Restoration Plan for the site if and when Lessee's Lease Agreement is not renewed or is terminated:

- Lessee shall purchase and provide to the City a Performance Bond in the amount of \$100,000 and shall be responsible for -\$15,000 (earnest money) to restoring the restoration of the snow play recreation area restore to (includes re-seeding, earth work, etc.) the site to the same condition it was in at the time this Lease was entered into, reasonable wear and tear excepted. Restoration its original look, which shall include re-seeding and necessary earth work.
- ~~The \$15,000 shall be held through a bonding company for the first three (3) years. However, the Lessee has the option to put the \$15,000 into an escrow account that would earn interest. Any interest accumulation would be due and payable to the Lessee, providing there are excess funds available after all restoration costs have been paid in full.~~
- Per the City's request, both parking lots would stay and become the full responsibility of the City. This would include all drainage channels, drainage basin, underground electrical and care for the parking lots.

Restoration Plan Includes the Following:

- The catwalk (the trail from the top of the hill leading down to the top of the slopes) grading will be reset to meet the grading of the hill and re-seeded.
- All other trails made by the Lessee on the hill side will have grading reset and re-seeded.
- All other sharp areas on the hill side will have grading reset to meet existing grade of mountain and re-seeded.
- All implements will be removed from hillside, top of hill and all other areas that fall within the 43 acre Lease Agreement.
- Large boulders will be strategically placed around the hillside to detour people from showing up to use the hill as a recreational snow play site.

**2. Fixtures**

All fixtures installed and permanently affixed to the realty of the Property during the term of this Lease shall become and remain the property of the City. All signs, decorations, fixtures, and equipment, which Lessee may install during the term of this Lease that have not been permanently attached to the Property shall remain the property of Lessee.

**3. Removal of Personal Property**

Within thirty (30) days of any termination of this Lease, however caused, Lessee shall remove from the Property all signs, decorations, equipment, trade fixtures and personal property belonging to Lessee, its agents, contractors or its permitted Sub-Lessee, if any, that have not been permanently attached to the Property.

**E. DAMAGE AND DESTRUCTION**

In the event of damage, destruction or substantial loss of or to the Property or any improvements constructed upon the Property which materially impairs Lessee's ability to conduct its business operations at the Property, resulting from any cause beyond the control of Lessee, which damage, destruction or loss is not capable of being repaired within ninety (90) days, Lessee shall have the option to terminate this Lease upon written notice to the City no later than ten (10) days after the occurrence of such event. In the event of such termination by Lessee, Lessee shall, at its sole cost and expense, subject to the consent of the Recreation Manager, conduct and perform all cleanup and/or demolition of the Property necessary to make the Property ready for repair, replacement, restoration or rebuilding. In the event that Lessee does not exercise such option, or in the event the damage, destruction or loss is capable of being repaired within ninety (90) days, then Lessee shall promptly repair, replace, restore or rebuild the Property or any improvements constructed thereupon.

**F. CONFLICT OF INTEREST**

Notwithstanding anything to the contrary contained in this Lease, the Parties acknowledge that, in accordance with Arizona Revised Statutes § 38-511, the City may terminate this Lease upon written notice at any time within three (3) years of its execution, without penalty or further obligation, in the event that any person significantly involved in initiating, securing, drafting or creating this Lease on behalf of the City shall become an employee or agent of Lessee in any capacity or shall render consulting services to Lessee with respect to the subject matter of this Lease.

## **ARTICLE VII. MISCELLANEOUS**

### **A. FORCE MAJEURE**

The performance of all covenants contained in this Lease, other than the covenants to pay rentals or other charges hereunder, shall be postponed and suspended during any period in which a Party's performance is prevented by acts of God, accidents, weather and conditions arising from them; strikes, boycotts, lockouts and other labor troubles; riot, fire, earthquake, flood, storm, lightning, epidemic, insurrection, rebellion, revolution, civil war, hostilities, war, the declaration or existence of a national emergency and attendant conditions; the exercise of paramount power by the Federal government, either through the taking of the Property or the imposition of regulations restricting the conduct of business at the Property; acts of enemies, sabotage, terrorism, interference, restriction, limitation or prevention by legislation, regulation, decree, order or request of any Federal, State or local government or any instrumentality or agency, including any court of competent jurisdiction; inability to secure labor or adequate supplies of materials, products or merchandise; or any other delay or contingency beyond the reasonable control of the Party whose performance is so prevented. Any Party desiring to invoke force majeure shall provide notice to the other Party no later than thirty (30) days following such Party's knowledge of the occurrence of such event and prompt notice of the cessation of such event.

### **B. ASSIGNMENT**

Lessee shall not at any time, without the prior written consent of the City:

1. Assign or transfer, or permit or participate in any assignment or transfer of, this Lease or any of the rights, powers or privileges under this Lease;
2. Merge, consolidate or combine, either directly or indirectly, with any other person, firm or corporation operating at the Property under any other lease or concession agreement, whether such uniting, merging, consolidating, or combining be through the sale of property or sale of stock or otherwise; or
3. Permit any of its owners, directors or officers to serve as a director or officer of any other firm or corporation operating at the Property under any other lease or concession agreement.

### **C. QUIET ENJOYMENT**

The City represents that it has the right to lease the Property, together with the rights, licenses and privileges granted in this Lease, and has full power and authority to enter into this Lease. The City agrees that, upon payment of the rent and performance of the covenants and agreements of this Lease by Lessee, Lessee shall peaceably have and enjoy the Property and all rights and privileges of the Property, its appurtenances and facilities as set forth in this Lease.

### **D. NOTICES**

Unless otherwise specified herein, any notice or other communication required or permitted to be given under this Lease shall be in writing and shall be effective and deemed received when hand-delivered or faxed, or if sent by mail, three (3) business days after mailing, to the

address given below for the Party to be notified, or to such other address of which notice is given in accordance with this Section E:

**If to the City:**

City of Flagstaff  
Brian Grube  
Recreation Services Director  
1702 N. 4<sup>th</sup> St.  
Flagstaff, Arizona 86001  
Phone: (928) 213-2306  
Fax: (928) 556-1226

**If to Lessee:**

D&C Maintenance and Snowplowing  
T.J. Dana, Managing Member  
3058 N. Joy Lane  
Flagstaff, Arizona 86001  
Phone: (928) 863-8564  
Fax: (928) 779-1910

**With a copy to:**

City Manager  
211 W. Aspen Avenue  
Flagstaff, Arizona 86001

**E. NO THIRD PARTIES**

This Lease is intended solely for the benefit of the City and Lessee and is not intended to benefit, either directly or indirectly, any third party or members of the public at large. Any work done or inspection of the Property performed by the City is solely for the benefit of the City and Lessee.

**F. INDEPENDENCE OF CONTRACT**

Nothing in this Lease is intended or shall be construed as in any way creating a relationship of partners or joint ventures between the Parties, or as constituting Lessee as the agent or representative or employee of the City for any purpose or in any manner whatsoever.

**G. WAIVER**

The failure of either Party to insist in any instance upon a strict performance by Lessee of any of the provisions, terms, covenants, reservations, conditions or stipulations contained in this Lease, shall not imply, constitute or be considered as a waiver or relinquishment of the right to insist upon performance of such condition or covenant, or of any other provision of this Lease, nor shall any waiver by either Party of any breach of any one or more conditions or covenants of this Lease constitute a waiver of any succeeding or other breach of this Lease. No waiver by the City of any provision, term, covenant, reservation, condition or stipulation contained in this Lease, shall be deemed to have been made in any instance unless expressed in the form of a resolution by the City Council.

**H. PRIOR AGREEMENTS; INTEGRATION; MODIFICATION**

The Parties acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties, except as expressed in this Lease, and that this Lease constitutes the Parties' entire agreement with respect to the matters addressed. All prior or contemporaneous agreements and understandings, oral or written, with respect to such

matters are hereby superseded and merged in this Lease. This Lease may be modified or amended only by written agreement fully executed by the Parties.

**I. SUCCESSORS AND ASSIGNS**

All covenants and conditions of this Lease shall bind and shall inure to the benefit of the legal representatives, successors and assigns of the respective Parties to this Lease, provided that any such representation, succession or assignment is authorized and permitted under this Lease and by law. Any and all agreements that Lessee shall make with any permitted assignee, and/or sub-lessee of the Property, or any part thereof, shall include all provisions contained in this Lease.

**J. SEVERABILITY**

In the event that a court of competent jurisdiction holds any part or provision of this Lease invalid, void or of no effect, the remaining provisions of this Lease shall remain in full force and effect, provided that continued enforcement of such remaining provisions does not materially prejudice either Lessee or the City in their respective rights and obligations contained in any valid provisions of this Lease.

**K. HEADINGS**

Headings or captions used in this Lease shall be used solely for convenience of the Parties, and shall not define, limit, describe, alter or affect the meaning of any provision of this Lease.

**L. DISPUTE RESOLUTION**

**1. Mediation**

In the event that a dispute arises out of or relates to this Lease and the dispute cannot be settled through negotiation, the Parties agree to first try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation shall be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, New York 10017, (212) 949-6490, [www.cpradr.org](http://www.cpradr.org), with the exception of the mediator selection provisions, unless other procedures are agreed upon by the Parties. Unless the Parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each Party shall bear its own costs in mediation. The Parties shall not be obligated to mediate if an indispensable party is unwilling to join the mediation. This Article VIII, Section N shall not constitute a waiver of the Parties' right to arbitrate or initiate legal action in the event that the dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

**2. Litigation and Attorney's Fees**

Except as otherwise agreed upon by the Parties, any litigation brought by either Party against the other Party to enforce the provisions of this Lease shall be filed in Coconino County Superior Court, Flagstaff, Arizona. In the event that any action at law, or in equity, is instituted between the Parties in connection with this Lease, the prevailing Party in the action shall be entitled to an award of costs, including reasonable attorney's fees and court costs, from the non-prevailing Party.

**M. GOVERNING LAW**

This Lease shall be governed, interpreted and enforced in accordance with the laws of the State of Arizona.

**N. COMPLIANCE WITH FEDERAL IMMIGRATION LAWS AND REGULATIONS**

Lessee hereby warrants to the City that the Lessee and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to its employees and A.R.S. §23-214(A) (hereinafter "Lessee Immigration Warranty").

1. A breach of the Lessee Immigration Warranty shall constitute a material breach of this Agreement and shall subject the Lessee to penalties up to and including termination of this Agreement at the sole discretion of the City.
2. The City retains the legal right to inspect the papers of any Lessee or Subcontractor employee who works on this Agreement to ensure that the Lessee or Subcontractor is complying with the Lessee Immigration Warranty. Lessee agrees to assist the City in regard to any such inspections.
3. The City may, at its sole discretion, conduct random verification of the employment records of the Lessee and any of Subcontractors to ensure compliance with Lessee's Immigration Warranty. Lessee agrees to assist the City in regard to any random verifications performed.
4. The provisions of this Article must be included in any contract the Lessee enters into with any and all of its Subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

**O. BUSINESS OPERATIONS IN SUDAN/IRAN**

In accordance with A.R.S. § 35-397, the Lessee certifies that the Lessee and its affiliates and subsidiaries do not have scrutinized business operations in Sudan or Iran. If the City determines that the Provider's certification is false, the City may impose all legal and equitable remedies available to it, including but not limited to termination of this Agreement.

IN WITNESSES WHEREOF, the City and Lessee have executed this Lease as of the day and year first above written.

**CITY OF FLAGSTAFF**

By: \_\_\_\_\_  
Kevin Burke, City Manager

**LESSEE**

By: \_\_\_\_\_  
Its \_\_\_\_\_

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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City Attorney

APPROVED AS TO FORM:

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Lessee's Attorney



## **EXHIBIT A**

### **GENERAL DESCRIPTION of SNOW PLAY AREA/SCOPE of WORK**

#### **General Description of the Leased Snow Play Recreation Area**

The Proposed McMillan Mesa Snow Play Park is located on a portion of City of Flagstaff owned property. The area is located approximately one mile from Downtown Flagstaff. The proposed lease area consists of forty-three (43) acres on the Northeast portion of the Mesa. The area retains a portion of the north face of the Mesa escarpment with an elevation change of approximately 160 vertical feet.

The lease park area is bounded on the North by Forest Avenue (4 lane arterial), on the East by Coconino High School, on the South by Gemini Street (2 lanes) and Open Space owned by the City, and the West by USGS campus. Vehicle access to the property is provided by the intersection of Forest Avenue and Gemini Street. Pedestrian access is provided by the Flagstaff Urban Trail System and the sidewalk along the public streets. Bus access is provided by stops located at the intersection of Forest Avenue and Gemini Streets.

#### **Zoning**

The lease area is zoned Rural Residential, RR and Public Land, PL Districts. The zoning code classifies the snow play park as an outdoor commercial recreation and uses are permitted subject to Conditional Use Permit (CUP) to be reviewed and approved by the ~~Development Review Board and the Planning and Zoning~~ Commission. This Lease Agreement is contingent upon approval of the CUP.

#### **Development Restrictions**

The City of Flagstaff values both outdoor recreational uses (park) as proposed, as well as the visual open space of the hillside. The lease area is part of a greater land ownership of the City of Flagstaff. The City of Flagstaff will apply slope resource protection based on the total slope area and owned by the City of Flagstaff on the Mesa (parcel 109-02-001N). The City will further restrict that 50% of the forest resource (trees greater than 6 inches at breast height) will be maintain within the lease area. Furthermore, it is expected that the operator shall develop sled/tube runs in such a manner that minimizes the visual impacts as viewed from Forest Avenue while maintaining operational sled/tube runs. It is expected that grading activities will be limited to the minimum extent possible.

#### **Scope of Work**

The Scope of Work shall be limited to **Section 3, “Operations and Management of Snow Play Area”** of the Lessee’s proposal response shall be incorporated into this Lease Agreement and adopted by reference.

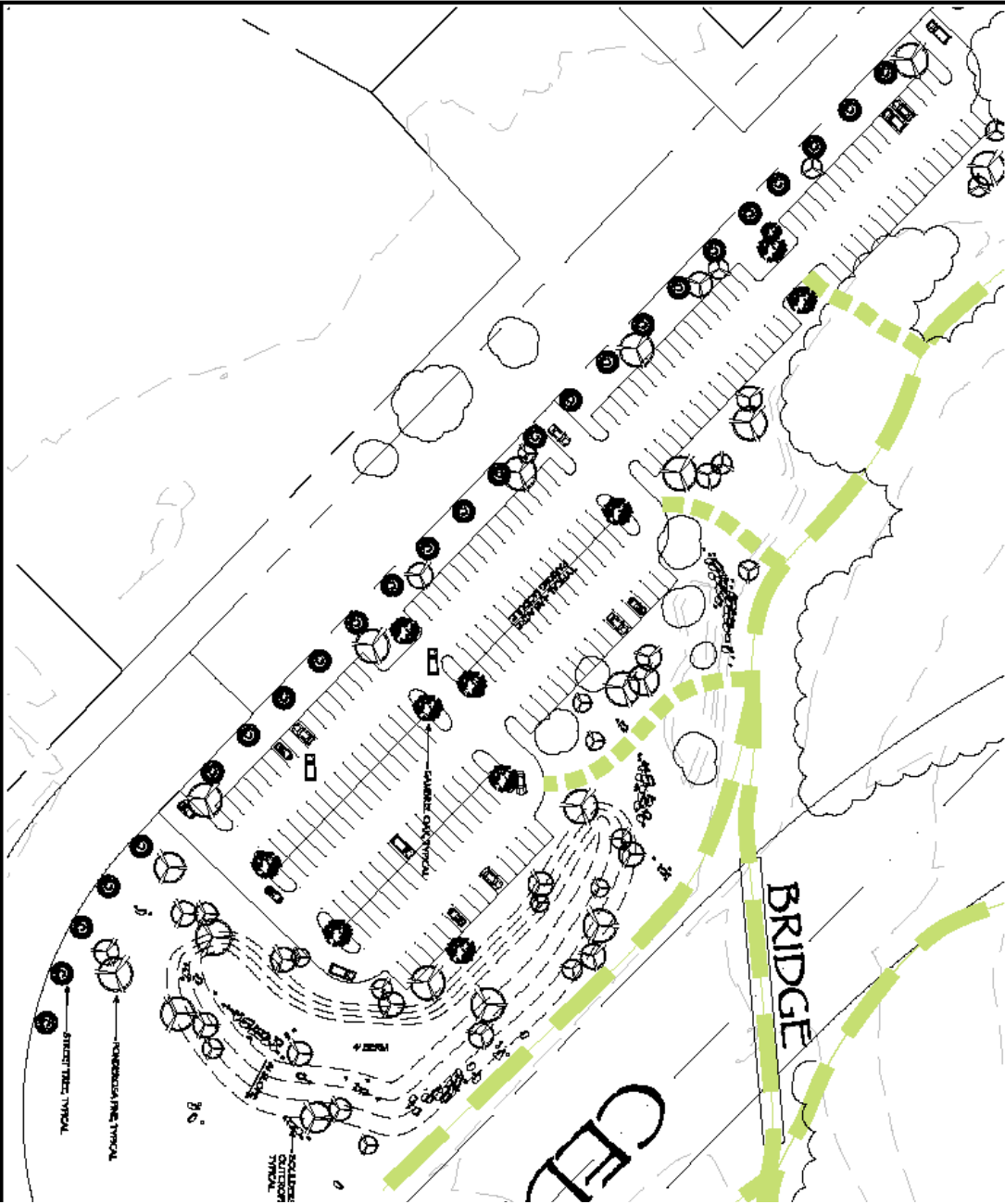
**EXHIBIT B**

**EAST SIDE LANDSCAPING and PARKING FOR SNOW PLAY  
RECREATION AREA**



**EXHIBIT C**

**WEST SIDE LANDSCAPING and PARKING FOR SNOW PLAY  
RECREATION AREA**



**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Barbara Goodrich, Management Services  
Director  
**Date:** 07/02/2012  
**Meeting  
Date:** 07/17/2012



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**TITLE:**

**Consideration and Adoption of Resolution No. 2012-30:** A resolution of the Council of the City of Flagstaff, Arizona, ordering and calling a special debt authorization election to be held on November 6, 2012, in and for the City of Flagstaff, Arizona, to submit to the qualified electors thereof questions with respect to the sale and issuance of various purpose bonds of the City of Flagstaff, Arizona .

**RECOMMENDED ACTION:**

Read Resolution No. 2012-30 by title only.  
Adopt Resolution No. 2012-30.

**Policy Decision or Reason for Action:**

The City Charter, Article XVI, Amendment No. 1 requires a vote for any bond issuance that will levy a bond that pledges City tax revenues as a guarantee for their payment, in whole or in part.

**Financial Impact:**

Based on current and projected property assessment valuation, the City has \$29 million in bonding capacity that can be supported at the current secondary property tax rate.  
The City has budgeted \$65,000 for elections in FY2013.

**Connection to Council Goal:**

- A sustainable community through economic vitality, environmental protection and social inclusion.
- Effective governance.
- Maintain and deliver quality, reliable infrastructure.

### **Has There Been Previous Council Decision on This:**

Yes.

The Forest Health and Water Supply Protection Project was presented to Council at the June 26, 2012 work session.

The Core Services Maintenance Facility was presented to Council at the May 22, 2012 work session and the Request for Proposal (RFP) was issued immediately after.

The Public Safety Criminal Justice Center Request for Statement of Qualifications (RSOQ) was issued January 2012 and the Courthouse needs were discussed as part of the unfunded capital needs at the April 2012 Council budget meetings.

### **Options and Alternatives**

Options/Alternatives:

- Approve all of the questions as written or amended for a total combined amount not to exceed \$29,000,000
- Approve one or two of the questions as written or amended for an amount not to exceed \$29,000,000
- Do not approve any bond questions to be placed on the November 6, 2012 general election

### **Background/History:**

The City reviews its ability to issue new general obligation debt on an annual or bi-annual basis within the current secondary property tax millage rate of \$0.8366 per \$100 of valuation. Based on current assessed valuations and assuming the City will issue previously authorized amounts, the City has capacity to issue \$29 million dollars in new debt.

Three projects are proposed that may use some or all of this capacity. The three projects include a Forest Health and Water Supply Protection Project, a Core Services Maintenance Facility, and a Public Safety Criminal Justice Facility. Discussions on these projects have occurred at various work sessions and a formal resolution is needed to place these items on the November 6, 2012 ballot.

### **Key Considerations:**

One key consideration is the council assessment of the need for providing the facilities and forest treatments to improve the infrastructure and quality of life for the Flagstaff community. In addition to the assessment of the need, the Council must consider how to fund these improvements. The questions allow the City to issue general obligation debt for these questions which use the City secondary property tax to secure the debt and in most cases, to pay the debt.

**Community Benefits and Considerations:**

- For the Forest Health and Water Supply Protection Project, the entire City as an asset is projected through proactive forest management techniques
- For the Core Services Maintenance Facility, community benefits include the allowance for adequate space for maintenance, storage, and repair of the City fleet and equipment; material storage, administrative offices, and other ancillary space needed to better operate City functions.
- For the Public Safety Criminal Justice Center, community benefits include having a reliable, well-built facility that will meet anticipated community needs offering safety and security to both the community and the staff. The facility will allow for adequate court rooms, prisoner transport and holding areas, and zoning separation of the movement by the public and the jurors. In addition, this facility will be able to handle future growth.

**Date of Council Approval:**

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**Attachments:**    2012-30 (8)



## **RESOLUTION NO. 2012-30**

### **RESOLUTION OF THE COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, ORDERING AND CALLING A SPECIAL DEBT AUTHORIZATION ELECTION TO BE HELD ON NOVEMBER 6, 2012, IN AND FOR THE CITY OF FLAGSTAFF, ARIZONA, TO SUBMIT TO THE QUALIFIED ELECTORS THEREOF QUESTIONS WITH RESPECT TO THE SALE AND ISSUANCE OF VARIOUS PURPOSE BONDS OF THE CITY OF FLAGSTAFF, ARIZONA**

WHEREAS, the Council of the City of Flagstaff, Arizona (hereinafter referred to as the "City"), hereby finds and determines that various capital needs of the City can be best financed through the sale and issuance of bonds; and

WHEREAS, pursuant to Section 35-452, Arizona Revised Statutes, as amended, the Council of the City must order an election to determine whether future capital needs of the City can be financed best through the issuance and sale of bonds of the City, the debt service with respect to which shall be secured through the levy of secondary, *ad valorem* property taxes levied upon all taxable property in the City; and

WHEREAS, pursuant to Article XVI of the Charter of the City, which requires the approval of a majority of the qualified electors of the City, if the amount to be expended therefor is more than \$1,000,000 (adjusted annually by the consumers price index since the effective date of such restriction), to purchase and/or construct municipal facilities, the Council of the City must order an election with respect to certain of such capital needs;

### **NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA AS FOLLOWS:**

#### Section 1. That

- (A) a special debt authorization election of the qualified electors of the City be called for the purposes described herein and the same is hereby ordered and called to be held on November 6, 2012 (hereinafter referred to as the "Election"), at which there shall be submitted to the qualified electors of the City the questions of selling and issuing bonds in the aggregate principal amounts and for the purposes set forth in the hereinafter described Official Ballot.
- (B) the aggregate principal amount of the bonds to be authorized at the Election shall be \$29,000,000; the maximum rate of interest to be paid therein shall be not more than ten percent (10%) per annum; the maximum number of years bonds of any issue or series

authorized at the Election may run from their date shall be twenty-five (25) years; the purposes for which the money derived from the sale of the bonds will be expended shall be as more fully set forth in the Official Ballot; the City currently has \$41,841,159 aggregate principal amount of *ad valorem* tax debt outstanding and the constitutional debt limit of the City is \$198,971,929, being twenty-six percent (26%) of the current secondary assessed valuation of the City.

Section 2. That

- (A) the Election shall be called and notice thereof given by mailing an informational pamphlet (hereinafter referred to as the "Informational Pamphlet") to each household that contains a registered voter within the District not less than thirty-five (35) days before the date of the Election.
- (B) the Clerk of the City is hereby authorized and directed to cause the Informational Pamphlet to be prepared and so mailed according to law and the provisions of this resolution under the circumstances described herein. (The Clerk of the City is hereby authorized and directed to submit, within thirty (30) days after the date of the Election, a copy of the Informational Pamphlet to the Arizona Department of Revenue.)

Section 3. That the Informational Pamphlet shall contain the information required by Section 35-454, Arizona Revised Statutes, as amended, and a sample of the official ballot and shall be in a form the Clerk of the City deems acceptable.

Section 4. That the official ballot for the Election (hereinafter referred to as the "Official Statement") shall be in substantially the form hereto attached and marked Exhibit "A."

Section 5. That the Clerk of the City is hereby authorized to request arguments for and against the appropriate subject matter of the Election for inclusion in the Informational Pamphlet by providing the notice in substantially the form attached hereto and marked Exhibit "B" (hereinafter referred to as the "Notice for Arguments") by posting the Notice of Arguments at all places at which notices of meetings of the Council of the City are posted and publishing the Notice of Arguments once in the *Arizona Daily Sun*. The deadline to submit arguments shall be 5:00 p.m. MST on August 8, 2012.

Section 6. That the polling places and the time the polls will be opened and closed shall be as provided in the Informational Pamphlet. The Council of the City hereby

- (i) establishes the election precincts for the Election as those with the same boundaries as the election precincts as provided in Section 16-411, Arizona Revised Statutes, as amended, except as otherwise provided hereby;
- (ii) designates each polling place in each precinct as so designated for such precinct;

- (iii) approves the consolidation of any precincts as determined to be necessary by the Clerk of the City and by such indication deems such consolidation as necessary for purposes of the Election; and
- (iv) with respect to any polling place for a precinct designated within an adjacent precinct, finds that no suitable polling place is available within such precinct.

Section 7. That

- (A) the Clerk of the City is hereby authorized and directed to have printed and, if appropriate, delivered to the election officers at said polling places, to be by them furnished to the qualified electors of the City offering to vote at the Election, the appropriate version of the Official Ballot.
- (B) in order to comply with the Voting Rights Act of 1965, as amended, the following items pertaining to the Election shall be translated into Spanish and mailed, distributed, posted, published and recorded in each instance where mailing, distributing, posting, publication and recording of such proceedings are required, to-wit: Informational Pamphlet, Official Ballot, Notice for Arguments, absentee voting materials and instructions at the polling places.

Section 8. That

- (A) the Election shall be held, conducted and canvassed in conformity with the provisions of the general election laws of the State of Arizona, except as otherwise provided by law, and only such persons shall be permitted to vote at the Election who are qualified electors of the City.
- (B) absentee/early voting shall be permitted in accordance with the provisions of Title 16, Chapter 4, Article 8, Arizona Revised Statutes, as amended, and that absentee/early voting information may be obtained as described in the Order and Call.
- (C) the Election may be conducted using either electromechanical or electronic vote recording and ballot counting equipment or paper ballots, as shall be determined to be in the best interests of the City by the Clerk of the City.
- (D) the Clerk of the City is authorized and directed, if necessary, to enter into a contract with the County Recorder of Coconino County, Arizona (hereinafter referred to as the "County"), to obtain precinct registers for the Election and, if necessary, to enter into an agreement with the Elections Department of the County to conduct the Election for the City.

- (E) all expenditures as may be necessary to order, notice, hold and administer the Election are hereby authorized, which expenditures shall be paid from current operating funds of the City.
- (F) the Clerk of the City is hereby further authorized to take all other necessary action to facilitate the Election.

Section 9. That

- (A) the Election shall be canvassed and the results thereof certified by the Council of the City within twenty (20) days of the Election, as provided by law.
- (B) the Council of the City shall file and record in the office of the County Recorder of the County a certificate disclosing with respect to the Election the purpose of the Election, the total number of votes cast and the total number of votes for and against creating the indebtedness and stating whether or not the indebtedness is ordered in each case.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 17th day of July, 2012.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

## EXHIBIT "A"

## FORM OF OFFICIAL BALLOT

OFFICIAL BALLOT

FOR SPECIAL DEBT AUTHORIZATION ELECTION TO BE  
HELD IN THE CITY OF FLAGSTAFF, ARIZONA, ON  
NOVEMBER 6, 2012.

**QUESTION NO. 101**

Purpose: **Forest Health and Water Supply Protection Project**  
Amount: **\$XX,000,000**

To prevent flood damage to the City of Flagstaff ('City'), and to protect the City water supply from damages which occur from large-scale and/or severe wildfire(s) in two watersheds serving the City, shall the City be authorized to sell and issue general obligation bonds in a principal amount up to \$XX,000,000:

- to expedite and conduct forest treatments in the Dry Lake Hills watershed north of town to reduce wildfire threat, thereby preventing subsequent flooding to Sunnyside, downtown, the NAU campus, and neighborhoods bordering the Rio de Flag;
- to plan and conduct forest treatments in the Lake Mary watershed south of the City to reduce wildfire threat, thereby protecting the storage capacity and water quality of Lake Mary and
- to pay all costs and expenses property incidental thereto and to the issuance of bonds?

The bonds may be issued in one or more series, will not mature more than 25 years from the date or dates of their issue, will bear interest at a rate or rates not to exceed 10% per annum, and will have such other provisions as are approved by the City Council. The following sentence has been included on this ballot as required by Arizona Revised Statutes 35-454(C): The issuance of these bonds will result in a property tax increase sufficient to pay the annual debt service on the bonds.

A vote for the bonds shall have the effect of allowing the City Council to issue up to \$XX,000,000 in general obligation bonds for planning and implementation of forest health and water supply protection projects

**For the  
Bonds**

☐

A vote against the bonds shall have the effect of not allowing the City Council to issue up to \$XX,000,000 in general obligation bonds for planning and implementation of forest health and water supply protection projects

**Against the  
Bonds**

☐

**QUESTION NO. 102**

Purpose: **Core Services Maintenance Facility**  
Amount: **\$XX,000,000**

To provide adequate space for maintenance, storage and repair of City fleet and equipment; materials storage; administrative offices and space for other City needs including, Facility Maintenance, Park Maintenance, Street Maintenance, Solid Waste and other Public Works & Utility functions, shall the City of Flagstaff be authorized to sell and issue general obligation bonds in a principal amount up to \$XX,000,000:

- for acquisition of land, purchase of equipment, building design and construction, and/or rehabilitation of existing facilities for a core services maintenance center, and;
- for the infrastructure and utilities associated with the acquired facilities;
- to pay all costs and expenses properly incidental thereto and to the issuance of bonds?

The bonds may be issued in one or more series, will not mature more than 25 years from the date or dates of their issue, will bear interest at a rate or rates not to exceed 10% per annum, and will have such other provisions as are approved by the City Council. The following sentence has been included on this ballot as required by Arizona Revised Statutes 35-454(C): The issuance of these bonds will result in a property tax increase sufficient to pay the annual debt service on the bonds.

A vote for the bonds shall have the effect of allowing the City Council to issue up to \$XX,000,000 in general obligation bonds to acquire land, purchase equipment, design and construct and/or rehabilitate an existing facility of a core services maintenance facility.

**For the  
Bonds**

☐

A vote against the bonds shall have the effect of not allowing the City Council to issue up to \$XX,000,000 in general obligation bonds to acquire land, purchase equipment, design and construction and/or rehabilitate an existing facility of a core services maintenance facility.

**Against the  
Bonds**

☐

**QUESTION NO. 103**

Purpose: **Public Safety – Criminal Justice Center**  
Amount: **\$XX,000,000**

To provide adequate court room facilities, prisoner transport and holding areas, zoning separation of the movement by public, jurors, prisoners and court staff, space for all court events, as well as staff, jurors and the public, shall the City of Flagstaff be authorized to sell and issue general obligation bonds in a principal amount up to \$XX,000,000:

- for the purpose of design and construction and/or rehabilitation of an existing facility for an approximately 40,000 square foot courthouse for the municipal court and
- to pay all costs and expenses properly incidental thereto and to the issuance of bonds?

The bonds may be issued in one or more series, will not mature more than 25 years from the date or dates of their issue, will bear interest at a rate or rates not to exceed 10% per annum, and will have such other provisions as are approved by the City Council. The following sentence has been included on this ballot as required by Arizona Revised Statutes 35-454(C): The issuance of these bonds will result in a property tax increase sufficient to pay the annual debt service on the bonds.

A vote for the bonds shall have the effect of allowing the City Council to issue up to \$XX,000,000 in general obligation bonds to design and construct and/or rehabilitate an existing facility for a criminal justice center.

**For the  
Bonds**

☐

A vote against the bonds shall have the effect of not allowing the City Council to issue up to \$XX,000,000 in general obligation bonds to design and construct and/or rehabilitate an existing facility for a criminal justice center.

**Against the  
Bonds**

☐

EXHIBIT "B

**FORM OF NOTICE FOR ARGUMENTS**

REQUEST FOR ARGUMENTS FOR AND AGAINST THE  
ISSUANCE OF BONDS BY THE CITY OF FLAGSTAFF,  
ARIZONA, TO BE CONSIDERED BY THE VOTERS OF THE  
CITY OF FLAGSTAFF, ARIZONA, AT AN ELECTION TO BE  
HELD ON NOVEMBER 6, 2012

Pursuant to a resolution adopted by the Council of City of Flagstaff, Arizona (the "City"), on July 17, 2012 (the "Resolution"), a special debt authorization election in and for the City was ordered and called to be held on November 6, 2012 (the "Election"). Notice of the Election will be given by mailing an informational pamphlet. Such pamphlet is to include arguments for and against the authorization of the sale and issuance of general obligation bonds by the City to be considered at the Election. (The text of the questions to be considered at the Election is included in the Resolution which is available at the Office of the Clerk, 211 West Aspen Avenue, Flagstaff, Arizona 86001.) Any person interested in providing any such argument is hereby requested to provide the same to the City Clerk, before 5:00 p.m., Arizona time on Wednesday, August 8, 2012. If you have any questions about the foregoing, please contact Elizabeth Burke, City Clerk, at 928-213-2076.

/s/ Elizabeth Burke

Elizabeth Burke, Flagstaff City Clerk



CERTIFICATION

I, Elizabeth Burke, City Clerk of the City of Flagstaff, Arizona, do hereby certify that the foregoing is a full, true and correct copy of Resolution No. 2012-30 adopted by the Flagstaff City Council at their Meeting held July 17, 2012.

IN WITNESS WHEREOF, I have hereunto set my hand and impressed the Official Seal of the City of Flagstaff, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
ELIZABETH BURKE, FLAGSTAFF CITY CLERK

(SEAL)

**15. A.**

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Margie Brown, Deputy City Clerk  
**Date:** 07/06/2012  
**Meeting Date:** 07/17/2012



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**TITLE:**

**Discussion/Consideration of Zoning Code Amendment:** A-frame signs.

**RECOMMENDED ACTION:**

Discuss and provide direction.

**Policy Decision or Reason for Action:**

This item has been requested by Councilmember Oravits.

**Financial Impact:**

Not applicable.

**Connection to Council Goal:**

Not applicable.

**Has There Been Previous Council Decision on This:**

Yes. The City Council adopted the A-Frame standards when it adopted the Zoning Code in November, 2011.

**Options and Alternatives**

Not applicable.

**Date of Council Approval:**

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**Attachments:**

**15. B.**

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Kevin Burke, City Manager  
**Date:** 07/11/2012  
**Meeting Date:** 07/17/2012



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**TITLE:**

**Consideration/Discussion:** August City Council Retreat

**RECOMMENDED ACTION:**

Discuss format and facilitation issues related to the August City Council Retreat

**Policy Decision or Reason for Action:**

See attached memo

**Financial Impact:**

See attached memo

**Connection to Council Goal:**

See attached memo

**Has There Been Previous Council Decision on This:**

See attached memo

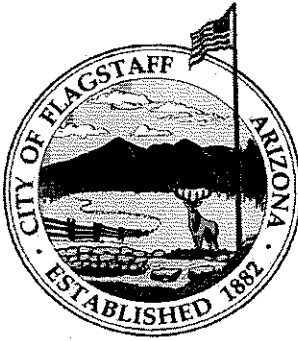
**Options and Alternatives**

See attached memo

**Date of Council Approval:**

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**Attachments:** August Retreat Memo



# MEMORANDUM

## CITY MANAGER'S OFFICE

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**DATE:** Thursday, July 12, 2012

**TO:** Mayor & Council

**FROM:** Kevin Burke, City Manager

**REGARDING:** August City Council Retreat

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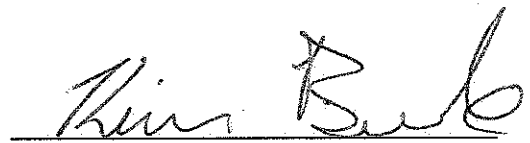
At the June 26, 2012 City Council Retreat, Council agreed that the next retreat would be focused upon Policies and likely take 1.5-2 days. A majority of the Council was not ready to talk about Council dynamics. While that part of the conversation morphed into a discussion about "touchy-feely" retreat activities, I still think that Council dynamics is an important component of how we implement the policy goals that Council establishes. However, I think it is appropriate to separate the two topics. So the August retreat would focus upon policy goals and objectives and a future retreat could focus upon Council dynamics.

The Mayor and the City Manager discussed the different options regarding facilitation. We would like to propose that the two of us facilitate the retreat. The City Manager will provide the framework, tools and flip-chart management. The Mayor will manage the dialogue.

In terms of framework, the City Manager is proposing the use of Interest Based Principles to goal setting. In short, this approach looks at general issues across all Councilmembers and tries to find common interests. This is opposed to identifying specific positions or objectives and trying to convince four individuals to support your position. The City Manager used this tool when first hired in 2008. A great example of how it worked was Affordable Housing. All members of Council recognized that Affordable Housing was a central policy concern in the community at that time; however, they had different positions on it. Consequently we developed a common issue statement: *"How can we facilitate an increased supply of homes between \$150,000 - \$280,000 (80-150% of AMI)?"* We then worked on a variety of solutions which translated into objectives (a copy of some of that work is attached).

This idea of broad goals and specific objectives can define a better work plan for staff because there is typically more buy-in than just the minimum four people. In addition, we would also revisit the Mission and Values Statement to determine if any modifications need to take place. Lastly, the City Manager will visit with each Councilmember ahead of time to get a head start on these objectives.

An alternative would be to bring in an outside facilitator and use their methodology. The Mayor and I both have facilitators that we have comfort with. The concern is their availability at this late date. However, if Council is not as comfortable with an "in-house" facilitation, an outside facilitator is possible. We may need to be slightly flexible on our dates. Lastly, an outside facilitator for a 2 day retreat is likely to cost in the neighborhood of \$3,000-\$4,000.

A handwritten signature in cursive script, reading "Kevin Burke", written in dark ink. The signature is fluid and stylized, with the first and last names being clearly legible.

Kevin Burke

## Interest Based Summary of Council Priorities

The model:

Issue = What is the problem within this area needing our attention?

Interest: Why are we interested in solving this? What is to be gained?

### Affordable Housing

Issue:

*How can we facilitate an increased supply of homes between \$150,000 - \$280,000 (80-150% of AMI)?*

Interest:

House city employees

Solutions:

Encourage public/private partnerships

Utilize manufactured housing

Encourage employers to provide affordable housing

Reduce costs of housing (impact fees)

Utilize land development code & engineering standards

Transitional housing (manage expectations)

Staffing to accomplish goals (legal, ...)

Utilize buyers market

### Economic Development

Issue:

*How can we facilitate an increase in the AMI?*

Interests:

Reduces affordable housing issues

Trailing spouses fully employed

Issue:

*How can we maximize investments (Conference Center, Sawmill, Mall, Airport, the Incubator)?*

Interests:

Ensuring return on our investments – Finish what we started

Maximize revenue in the General Fund in order to provide services

Issue:

*What can we do to enhance the opportunities for business development?*

*How do we build on our strengths to create anchor industries and bring budding ideas to the market? (this was a combination of four issues)*

*How do we encourage public private partnerships?*

Interests:

Solutions:

Remove housing as a negative to economic development

Remove obstacles

## IB Summary of Council Priorities (cont.)

Promote alternative energy as an anchor industry  
Promote green building materials as an anchor industry, bio mass/forests  
Cultivate new technologies – force hybrids  
Continue and strengthen NAU & CCC partnerships  
Identify and help the gazelles (rapidly growing businesses) – Niles Radio

Issue:

*How do we align the labor supply with labor demand?*

Interests:

Full employment of trailing spouses  
Fill city vacancies – Police  
Fill jobs requiring Commercial Driver's Licenses  
Don't lose our Medical opportunities – FMC, Gore

Solutions:

Education  
Science & Technology  
Grow your own

### Water

Issue:

*How do we secure our water future for the next 100 years?*

Interests:

It's a limit to growth  
Ensuring existing customer confidence

Solutions:

Maximizing water conservation  
Involve storm water utility in conservation

Issue:

*How do we increase demand and supply for reclaimed water?*

Interests:

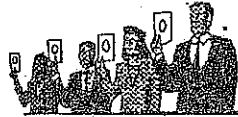
Maintain the momentum

Solutions:

Identify companies that could be converted to reclaimed water

## The PAST Model

- ♦ Principles
- ♦ Assumptions
- ♦ Steps
- ♦ Techniques



## INTEREST - BASED PRINCIPLES

- ♦ Focus on Issues, Not Personalities
- ♦ Focus on Interests, Not Positions
- ♦ Create Options to Satisfy Both Mutual and Separate Interests
- ♦ Evaluate Options with Factors, Not Power

## INTEREST - BASED DEFINITIONS

- ♦ ISSUE = Topic or Subject for Problem Solving
- ♦ INTEREST = One Party's Concern About an Issue
- ♦ OPTIONS = Solutions That Can Satisfy an Interest
- ♦ CLOSURE TOOLS = Processes or Factors to Compare, Judge and Select Options



## INTEREST - BASED ASSUMPTIONS

- ♦ Problem Solving Enhances Relationships
- ♦ Both Parties Can Win
- ♦ Parties Should Help Each Other Win
- ♦ Open Discussion Expands Mutual Interests and Options
- ♦ Closure Tools Can Replace Power for Solutions

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## INTEREST - BASED STEPS

- ♦ Define Issues
- ♦ Determine Interests
- ♦ Develop Options
- ♦ Select Closure Tools
- ♦ Develop Solution

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## INTEREST - BASED VS TRADITIONAL

- | ♦ <u>INTEREST - BASED</u> | ♦ <u>TRADITIONAL</u>   |
|---------------------------|------------------------|
| ♦ Issues                  | ♦ Issues               |
| ♦ Interests               | ♦ Positions            |
| ♦ Options                 | ♦ Arguments            |
| ♦ Closure Tools           | ♦ Power/ Compromise    |
| ♦ Agreement - Both Win    | ♦ Agreement - Win/Lose |

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## INTEREST - BASED TECHNIQUES

- ♦ Brainstorming
- ♦ Consensus Building
- ♦ Idea Charting
- ♦ Effective Communications
- ♦ Understanding Differences

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## STEP 1: DEFINE THE ISSUE

- To ensure a common understanding of the problem
- To put the problem in a format for interest based problem solving

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## STEP 1: DEFINE THE ISSUE

1. Develop a question with
  - Subject - What the problem is about
  - Detail - Identifies issue in specific terms
2. Begin with "How might we"
3. Cannot be answered "Yes" or "No"
4. Contains no Solutions
5. Contains no accusations or inflammatory wording

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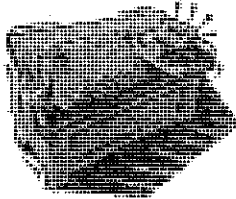
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## SUBJECT

Includes the subject  
(what the problem is  
about)

- ♦ Scheduling
- ♦ Customer service
- ♦ Dress requirements
- ♦ Overtime costs



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## DETAILS

Identifies the specific concern  
regarding the subject

- "overlap" in schedules
- "improving" customer service
- "more relaxed" dress code
- "controlling" overtime costs

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## QUESTION

1. begins "How might we...?"  
"How can we...?"
2. cannot be answered "yes or no"
3. contains no solutions
4. contains no accusations or  
inflammatory wording

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## PROPER QUESTIONS

- ♦ How might we avoid overlap in the schedules?
- ♦ How might we improve customer service?
- ♦ How might we relax the dress code?
- ♦ How can we control overtime costs?

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"My supervisor needs to stop being so picky about drinking coffee in the office."

Subject: Flexible Work Rules

Detail: Refreshments

Question: How might we allow more flexibility concerning work place refreshments?

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## STEP 2: DETERMINE INTERESTS

- ♦ To illustrate interests with needs and concerns
- ♦ To distinguish between positions and interests
- ♦ To define and use common interests

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## STEP 2: DETERMINE INTERESTS

### HOW

- ♦ Ask why this is a problem
- ♦ Identify and chart individual interests
- ♦ Discuss common interests
- ♦ Discuss separate interests

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## STEP 2: DETERMINE INTERESTS

### Common Interests

- ♦ Identical interests to yours
- ♦ Conceptually similar interests
- ♦ Interests of others you can support

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## STEP 3: DEVELOPING OPTIONS

- ♦ To engage all participants
- ♦ To explore a full range of creative ideas
- ♦ To develop a solution to the problem which satisfies common interests

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## STEP 3: DEVELOPING OPTIONS

- ♦ Review the option generation methods
- ♦ Select method by considering:
  - Issue complexity
  - Time availability
  - Skills of group members
  - Level of facilitation available



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## Step 3: DEVELOPING OPTIONS

Select the Appropriate Process(es)

- ♦ Best Practice
- ♦ Expert Panel
- ♦ Focus Group
- ♦ Straw Design
- ♦ Brainstorming



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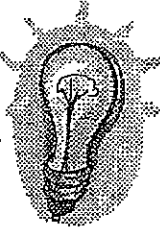
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## RULES FOR BRAINSTORMING

- ♦ Define the Problem
- ♦ No Killer Phases
- ♦ Build on Other's Ideas
- ♦ Aim for Quantity
- ♦ Use Free-Wheeling Imagination
- ♦ Record Each Idea



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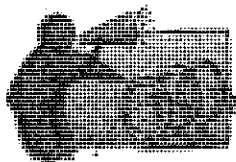
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## STEP 4: SELECT CLOSURE TOOL(S)

- ♦ Winnowing the List
- ♦ Weighted Polling
- ♦ Interests / Standards Matrix
- ♦ Option Ranking
- ♦ Straw Design
- ♦ Proposing Closure



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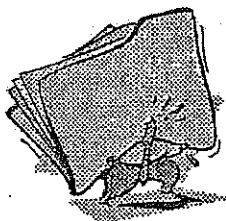
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## SHORTEN THE LIST

- ♦ Agree on process
  - Eliminate Duplicates
  - Categorize
  - Preference Check
  - Prioritize
- ♦ Agree "how used"
- ♦ Focus on most frequently selected options



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## DEVELOP STANDARDS

- ♦ List Potential Standards
- ♦ Consensus on final choices
- ♦ Limit to 4 to 8



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## POSSIBLE CRITERIA/STANDARDS

- ♦ Simplicity
- ♦ Efficiency
- ♦ Fairness
- ♦ Equity
- ♦ Affordability
- ♦ Flexibility
- ♦ Area Practice
- ♦ Legal
- ♦ Workability
- ♦ Practicable
- ♦ Credible
- ♦ Saleable-Ratifiable
- ♦ Ethical
- ♦ Industry Practice

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## GROUP CONSENSUS

- ♦ Agrees upon a Single Solution and
- ♦ Each member can honestly say:
  - ♦ You understand my point of view.
  - ♦ I understand your point of view.
  - ♦ Whether or not I prefer this decision, I will support it.

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## CONSENSUS GUIDELINES

- ♦ Encourage Participation
- ♦ Don't Trade for Support
- ♦ Create A Supported Solution
- ♦ Don't Vote
- ♦ Listen
- ♦ Share Information
- ♦ Don't Yield to Pressure
- ♦ Treat Differences As Strengths
- ♦ Avoid Arguing or Blocking

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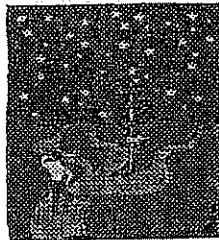
## BENEFITS OF CONSENSUS

- ♦ Creativity is encouraged
- ♦ All group members are engaged, providing commitment to and satisfaction with the process
- ♦ Post decision ownership and support is greater
- ♦ Acceptance by constituents will be stronger
- ♦ Encourages respect, listening, information sharing, and cooperation

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## STANDOUTS

- Defined as an exception(s) to reaching a decision supported by the rest of the group
- Also referred to as "blockers"



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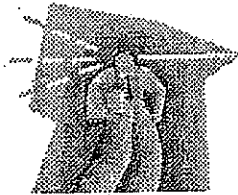
## RESPONSIBILITIES OF STANDOUTS

- Stay involved with the group and not yield to pressure
- Clearly explain the reasons for blocking consensus
- Offer a solution that would remove the block

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## RESPONSIBILITIES OF THE GROUP REGARDING STANDOUTS

- ♦ Show respect for the standout
- ♦ Listen carefully to the standout
- ♦ Strive to develop a solution everyone can support



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## REACHING A FINAL SOLUTION

- ♦ Decide if the best options can be retained
- ♦ Select options which satisfy the most interests



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## PROGRAM SUMMARY

### Interest-Based Problem Solving

- ♦ Step 1 - Define the Problem
- ♦ Step 2 - Determine Interests
- ♦ Step 3 - Develop Options
- ♦ Step 4 - Select Closure Tool(s)
- ♦ Step 5 - Select Solution

### Consensus

- ♦ I was heard
- ♦ I can live with the decision
- ♦ I can actively support the decision

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## Sample Ground Rules for IBB

(These are only samples collected from several sources. It is not expected that you would want to adopt all of them.)

### Behavior

- Titles and positions will be left at door
- Focus on issues, not people
- Treat each other with respect
- Actively listen and seek to understand before being understood
- No side-bar conversations during negotiations session
- Don't interrupt
- Accept mistakes in good faith
- Be open and honest
- It's okay to disagree

### Process

- Utilize and commit to interest based bargaining process
- Focus on interest, not positions
- Create/Invent without committing
- Acceptable options must address solutions to the issue
- Each party gives their understanding of the other parties' interests and/or issues
- Ground rules can be amended
- Corrections will be made as necessary
- Speaker recognition -- raise your hand
- Issues can be added according to past practice
- Issues can be revisited by consensus of the group
- Start and end on time
- A consensus reached will not be changed by disagreement of someone absent at the meeting in which consensus was reached
- Everyone is encouraged to speak
- Keep focused on the issue
- Communicate in summary form, not related to individuals
- Long-term replacements (4 days or more) will be chosen from people who already received IBB training
- Use of alternates will not be used on a day-to-day basis (issues may be deferred due to absences)
- The goal to complete negotiations is DATE
- Negotiations are not open to observers
- Resources people (experts) may attend if invited
- There will be one official set of minutes recorded on flip charts throughout the day and distributed to the negotiating team at the next session (Must also decide who will be possible for transcription, copying, distribution)
- Union may want access to information which the employers consider confidential -- the data committee will work out a mechanism for collecting and sharing information

- Contract language writing assignment will be done as soon as possible after reaching a mutual agreement

### **Structure**

- Establish a joint Data Committee to gather information
- Establish a joint Language Committee
- Establish a joint Communications Committee
- Minutes will be kept and approved at next meeting
- Daily review of content and process at the beginning of the day
- Caucuses will be held to a minimum.
- Establish agenda ahead of each meeting
- Dress code will be casual (jeans are okay)
- Lunch will be up to each individual
- Beverages and continental breakfast will be provided (decide who pays, what percent)